United States Court of Appeals

for the Second Circuit

EXHIBITS

76-7476

United States Court of Appeals
For The Second Circuit

No. 76-7476

NEWBURGER, LOEB & CO., INC. as Assignee of Claims of David Buckley and Mary Buckley,
Plaintiff-Appellant-Cross-Appellee,

against

CHARLES GROSS, MABEL BLEICH. GROSS & CO., and JEANNE DONOGHUE,
Defendants-Appellees-Cross-Appellants,

B

NEWBURGER, LOEB & CO., a New York Limited Partnership, ANDREW M. NEWBURGER, ROBERT L. NEWBURGER, RICHARD D. STERN, WALTER D. STERN, and ROBERT L. STERN as Executors of the Estate of Leo Stern, ROBERT L. STERN, RICHARD D. STERN, JOHN F. SETTEL, HAROLD J. RICHARDS, SANFORD ROGGENBURG, HARRY B. FRANK and JEROME TARNOFF as Executors of the Estate of Ned D. Frank, FRED KAYNE, ROBERT MUH, PAUL RISHER, CHARLES SLOANE, ROBERT S. PERSKY, FINLEY, KUMBLE, WAGNER, HEINE, UNDERBERG & GRUTMAN, a Partnership, (formerly known as Finley, Kumble, Underberg, Persky & Roth and Finley, Kumble, Heine, Underberg & Grutman) and LAWRENCE J. BERKOWITZ,

Additional Defendants on Counterclaims-Appellants-Cross-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX—EXHIBITS
Volume III—E-748–E-1092

UNITED STATES COURT OF APPEALS
FILED
FEB 4 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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Arbitration claim of Kayne & Sloane v. Gross.

DEFENDANTS' EXHIBIT KKK.

E 748

NEW YORK STOCK EXCHANGE

CHARLES SLOANE and FRED KAYNE,
Claimants,

-against-

CHARLES H. GROSS,
Respondent.

STATEMENT

1. Claimants desire to bring arbitration proceedings, under the auspices of the New York Stock Exchange, against respondent CHARLES H. GROSS, a resident of the State of New York.

2. Claimants are represented by counsel, to wit, DONALD LAVENTHALL, LAVENTHALL & ZICKLIN, 521 Fifth Avenue, New York, N. Y.

3. Statement of claim attached.

4. Damages claimed, ONE MILLION ONE HUNDRED THOUSAND ($1,100,000) Dollars.

5. Claimants desire hearing by a Board panel in New York.

Dated: October 18, 1971.

CHARLES SLOANE

Fred Kayne

FRED KAYNE

E 749

NEW YORK STOCK EXCHANGE

CHARLES SLOANE and FRED KAYNE,	:
Claimants,	:
-against-	:
CHARLES H. GROSS,	:
Respondent.	:

CHARLES SLOANE and FRED KAYNE, complaining of CHARLES H. GROSS, respectfully allege that:

1. Charles Sloane was, at all material times prior to buying the securities mentioned herein, the Manager of a Los Angeles, California office and a Vice President of McDonnell & Co., and was a Registered Representative and officer of said firm, and as such was qualified by the New York Stock Exchange ("Exchange") and the National Association of Securities Dealers, ("NASD").

2. Fred Kayne was, at all material times prior to buying the securities mentioned herein, a Registered Representative of McDonnell & Co. and subsequent to the receivership of McDonnell & Co., he was a Registered Representative of Shearson, Hammill & Co , Incorporated, in both cases located in Los Angeles, California, and was a Registered Representative of said firms and as such was qualified by the Exchange and the NASD.

3. Respondent was at all material times mentioned herein a General Partner and, in fact, the Managing Partner of Newburger Loeb & Co.

4. At all times mentioned herein, Newburger Loeb & Co. was a limited partnership formed pursuant to Article VIII of the New York Partnership Law.

5. In or about September, 1969, respondent met with claimants, at which time negotiations were initiated which culminated in the matters herein set forth. During the period between September, 1969 and January, 1970, respondent represented to claimant that Newburger, Loeb & Co. was (1) a financially strong entity, having general partnership capital in excess of $2,206,250, (2) was operating at a current profit, (3) the partnership was in goodstanding with the Exchange, and (4) was staffed by competent management personnel, who were engaged in management practices which were safe, accepted, and meeting the high standards utilized in the stock brokerage business.

6. Representations made by the respondent were in fact false. The actual facts were (1) the existing capital was materially less than $2,206,250, (2) the partnership was not operating at a current profit, (3) the partnership was not in good standing with the Exchange, and (4) the partnership was not staffed by competent management personnel for the reason that it engaged in management practices which were not safe, accepted, nor meeting the high standards utilized in the stock brokerage business.

7. When respondent made such representations, he knew them to be false; such statements were made by respondent with the intent to defraud and deceive claimants and to induce them to act in the manner alleged in paragraph 8.

8. Claimants, at the time said representations were made, were ignorant of their falsity but believed them to be true. In reliance thereon, claimants were induced to terminate their employment with other member firms of the Exchange and NASD and purchase 2% partnership interests in the limited partnership of Newburger, Loeb & Co. at a cost of $50,000 each, and entered into a limited partnership agreement, a copy of which is annexed hereto, made a part hereof and marked "Exhibit A"; had claimants known the facts, they would not have taken such action. ~~An interest in a limited partnership is a security within the definitions utilized in the Act of 1933 and the Securities Exchange Act of 1934.~~ After discovering the facts alleged herein, claimants attempted to right the sinking partnership, while respondent, shirking his fiduciary responsibility, bailed out by terminating his partnership interest. Finally in or about November, 1970, claimants terminated their partnership interest in said limited partnership, realizing a total loss of their partnership interest.

9. Said devices, schemes, artifices, untrue statements of material facts, omissions to state material facts, acts, practices, and courses of business operated as a fraud or deceit upon the claimants and were in ~~violation of Section 12 of the Securities Act of 1933, Section 10 of the Securities Exchange Act of 1934, and~~ contravention of state law.

In doing the things hereinabove alleged, respondent acted maliciously and was guilty of wanton disregard of the rights of the claimants.

10. During the period between July, 1969 and July, 1970, respondent was a member of the Executive Committee and Managing Partner of Newburger, Loeb & Co. (as constituted under the Partnership Agreement annexed hereto as Exhibit "A" as well as under the preceding partnership), and was authorized to exercise full power and authority to manage the affairs and business of the partnership on behalf of the remaining partners of Newburger, Loeb & Co. Respondent was charged with a fiduciary duty in relation to said matters, both as a general partner and as a member of the Executive Committee.

11. During said period, respondent mismanaged the assets of the partnership and exceeded his authority in breach of his fiduciary relationship to the remaining partners of Newburger, Loeb & Co., including the claimants herein.

12. As a direct and approximate result of the matters herein alleged, claimants have suffered damages as follows:

(a) Out-of-pocket losses in the amount of $50,000 each, for an aggregate of $100,000;

(b) Loss of profits due to their association with Newburger, Loeb & Co., in the amount of $50,000 each, for an aggregate of $100,000; and

(c) Exposure to vast partnership liabilities in an amount of at least $3,000,000; claimants are seeking damages for exposure to such liabilities in the amount of $200,000 each for an aggregate of $400,000.

WHEREFORE, claimants demand judgment in their favor and against respondent as follows:

1. Out-of-pocket losses of $100,000.

2. Damages for loss of profits in the amount of $100,000.

3. Damages for exposure to partnership liabilities in the amount of $400,000.

4. Punitive damages in the amount of $500,000; together with the costs of this proceeding and such other, further and different relief as may be proper in the premises.

Dated: October 18, 1971.

Charles Sloane
CHARLES SLOANE

Fred Kayne
FRED KAYNE

Exhibit A to Defendants' Trial

Exhibit KKK,

See, Defendants' Trial Exhibit U:

Restated Articles of Limited Partnership.

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DEFENDANTS' EXHIBIT LLL.

Gross Reply in Arbitration Proceeding.

NEW YORK STOCK EXCHANGE, INC.
BOARD OF ARBITRATION

E 754

CHARLES SLOANE and FRED KAYNE, :

Claimants, :

-against- : REPLY

CHARLES H. GROSS, :

Respondent. :

Respondent Charles H. Gross replies to the Statement of Claim of Charles Sloane and Fred Kayne as follows:

FIRST: Paragraphs "1" and "2" of the Statement of Claim are inaccurate in several important respects.

a. Charles Sloane and Fred Kayne never purchased "securities" in the stock brokerage firm of Newburger Loeb & Co. (referred through in this answer as "Newburger Loeb"). Rather, they became general partners of Newburger Loeb in late February, 1970. In recognition of a United States federal court ruling against Claimants Sloane and Kayne that they did not purchase "securities" when the became partners of Newburger Loeb, the parties to this proceeding have executed a stipulation -- a copy of which is annexed as Exhibit "A" which amends the Statement of Claim to reflect the fact that a general partnership in Newburger Loeb was not a "security". The above mentioned federal court decision was made in an action brought by Claimants Sloane and Kayne against me in which they made substantially the same claims that they have made in bringing this arbitration. The decision,

dated August 24, 1971, is annexed as Exhibit "B". E 755

b. Immediately prior to becoming a general partner of Newburger Loeb, Claimant Charles Sloane was not -- as he alleges -- an employee of McDonnell & Co. Rather, from October 1, 1969 to approximately the end of February 1970 -- a period of close to five months -- Sloane was an employee of Newburger Loeb at a salary of $5,000 per month.

c. Immediately prior to becoming a general partner of Newburger Loeb, Claimant Fred Kayne was not -- as he alleges -- an employee of McDonnell. Rather, he was employed by Newburger Loeb as a registered representative during a portion of January and most of February, 1970.

SECOND: Paragraph "3" of the Statement of Claim is so incomplete as to be possibly misleading. During the period of time covered by the Statement of Claim, the general affairs of Newburger Loeb were managed by an Executive Committee which was comprised, until March, 1970 of six general partners of the firm. In March, the Committee was expanded to seven members. The duties and responsibilities of the Executive Committee as set forth in the Newburger Loeb Restated Articles of Partnership was "to manage the affairs and business of the partnership." In deliberations of the Executive Committee, each member was of equal standing and had but one vote. Decisions of the Committee were made by majority vote. I was one of the members of the Committee. The Chairman of the Committee was Robert L. Newburger who had the responsibility of fixing the agenda of and chairing the meetings. All policies

of Newburger Loeb were made or approved by the Executive Committee. The Executive Committee designated me as "Managing Partner" in July, 1969, eight months prior to the adoption of the Restated Articles of Partnership. My function as "Managing Partner" was no more or less than to execute from day to day the policies fixed or approved by the Executive Committee. This is evidenced, among other ways, by the Restated Articles of Partnership, adopted many months after I was designated as Managing Partner. Although these Restated Articles (annexed to the Statement of Claim) constituted a major revision of the Newburger Loeb partnership agreement, the Articles make no mention of a Managing Partner but continued to vest the management of Newburger Loeb in the Executive Committee.

THIRD: The charges made in Paragraphs "5", "6", and "7" of the Statement of Claim are false, and I categorically reject the charges and deny them. The truth will be established to the satisfaction of the arbitrators upon the hearing of this case. It should be noted at this time, however, that insofar as the Statement of Claim alleges that there were discussions between the Claimants and Newburger Loeb in the Fall of 1969 -- a fact which I do not deny -- the Executive Committee of Newburger Loeb delegated responsibility for those discussions to three partners of the firm: Robert L. Newburger (general partner and Chairman of the Executive Committee); John F. Settel (general partner, who became a permanent member of the Executive Committee in March, 1970); and myself. The discussions between Newburger Loeb and the Claimants were carried on at times by all of the foregoing three partners, and at times by others. To my knowledge Claimants have never asserted any claim or commenced any proceeding against Robert L. Newburger or John F. Settel. Rather, Robert L. Newburger and John F. Settel are presently voting

stockholders of Newburger Loeb & Co. Inc., a Member Corporation formed and promoted in 1971 by Claimants, in conjunction with others, which corporation took over the business and the affairs of the Newburger Loeb partnership on February 11, 1971.

FOURTH: Most of the facts alleged in paragraph "8" of the Statement of Claim are false and intentionally misleading. The charges are categorically rejected and denied. Among other things:

a. Claimants were not induced to terminate their employment, but rather themselves sought to become affiliated with Newburger Loeb. I first met Claimant Sloane in the late summer of 1969 when he came to my office in New York City. He told me that his employer, McDonnell & Co., was in trouble and that he and Claimant Kayne were interested in leaving that firm. Sloane proposed that Newburger Loeb might perhaps purchase the Century City, California Office of McDonnell, of which office he was manager and Kayne was the largest producer. Sloane stated his belief that the McDonnell registered representatives in that office would be willing to become employed by Newburger Loeb. Shortly thereafter, Robert Newburger, John F. Settel, and I flew to Los Angeles where at a group meeting, we met with Sloane and Kayne and the McDonnell, Century City Office registered representatives. Robert Newburger, Mr. Settel, and I returned to New York and attempted to negotiate the purchase of the McDonnell office. We learned, surprisingly, that the office was not at that time for sale. Thereafter Claimants Sloane and Kayne convinced Newburger Loab to establish a new office in Century City, California with Kayne and Sloane to spearhead and

supervise the effort and to become resident general partners of Newburger Loeb in charge of the office. Accordingly, Sloane left McDonnell, became employed by Newburger Loeb at a salary of $5,000 per month and remained at this salary until becoming a general partner in late February 1970, at which time he received $45,000 per year salary plus a percentage of the profit attributable to the newly established Newburger Loeb Century City Office. In January 1970, Kayne left the McDonnell office (then owned by Shearson Hammill), became employed by Newburger Loeb, and in late February became a general partner of Newburger Loeb. At the hearing of this case, the true facts as to why Claimants eagerly sought to affiliate themselves with Newburger Loeb will be presented.

b. Claimant Sloane did not contribute $50,000 to Newburger Loeb, as alleged in the Statement of Claim, but contributed only $25,000.

c. The partnership agreement was not, as implied, executed by Claimants upon their entry into the Newburger Loeb partnership. Rather, the agreement was executed several months after they became associated with Newburger Loeb, and after the Century City Office -- established under their direction at a cost of approximately $250,000 to Newburger Loeb -- was in operation.

d. Claimants' interest in Newburger Loeb was not a "security" as alleged in the Statement of Claim. See Paragraph "FIRST (a)" above.

(e) The statement that I "bailed out" of Newburger Loeb and that Claimants "realized a total loss of their partnership interest" is outrageous and false. The precise opposite is true. The evidence

presented to the arbitrators at the hearing will establish the following facts:

Claimants promoted and were instrumental in forming a corporation which, on February 11, 1971, took over the business and firm name of the Newburger Loeb partnership. It is true that as of that date, Claimants Kayne and Sloane were no longer partners of the Newburger Loeb partnership. They were still employed by Newburger Loeb, however, and had withdrawn from the partnership for the purpose of promoting the successor corporation. They hardly lost their investment in the partnership. Kayne emerged in the successor corporation as Chairman of the Executive Committee, Chief Operating Officer, and a substantial voting stockholder. Sloane emerged in the successor corporation as a Senior Vice President, a director, and substantial voting stockholder. It will be shown upon the hearing that not only did Sloane and Kayne recoup the monies they contributed to the Newburger partnership, but profited very substantially as a direct result of their association with Newburger Loeb. In contrast, the arbitrators should note that during the 21 months that I was a general partner of Newburger Loeb I contributed over $1,100,000 of my money to that firm, including my own membership in the New York Stock Exchange. As of this date, I have not received a penny of this money, despite the facts that (1) I withdrew from the firm as of September 30, 1970; (2) there is a substantial credit balance in my capital account; and (3) I have demanded payment of all sums due me.

In the light of the foregoing facts, it is difficult to see how it can be said that I "bailed out" and that the Claimants

"sustained losses". The truth is just the opposite. E 760

FIFTH: Paragraph "9" of the Statement of Claim is false in its entirety and is categorically rejected and denied. Moreover, as a result of the California federal court decision in my favor, the said Paragraph "9" has been substantially amended by stipulation of the parties annexed as Exhibit "A".

SIXTH: Paragraph "10" of the Statement of Claim is materially false and reference is here made to the facts stated above at Paragraph "SECOND".

SEVENTH: Paragraph "11" of the Statement of Claim is false in its entirety, and is categorically rejected and denied. The assets of the partnership were managed by the Executive Committee and by Claimants themselves. Moreover, the matters raised in Paragraph "11" may not be arbitrated before the New York Stock Exchange in view of the Claimants' conduct and activities which indicate an election by them to litigate in court rather than arbitrate such matters.

EIGHTH: For the reasons set forth in Paragraph "FOURTH" of this answer, and for other reasons, the claims in Paragraph "12" of the Statement of Claim are false in their entirety, are categorically rejected, and are denied.

THE FOLLOWING PARAGRAPHS EACH CONTAIN A COMPLETE DEFENSE AND ABSOLUTE BAR TO THE CLAIMS OF SLOANE AND KAYNE

NINTH: Claimants have sustained no losses, but rather gained substantial profit, by virtue of their affiliation with Newburger Loeb.

TENTH: In or about February, 1971, Claimants executed instruments wherein they released the Newburger Loeb partnership, its general partners and its limited partners, including, among others, Robert Newburger and John F. Settel:

> "of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, execution, claims and demands whatsoever, in law, in admiralty, or in equity, which .. [claimants] ever had, now [have] or which [t]he[y] .. shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents."

I am informed, that under the law, the foregoing instrument of release bars Claimants from making any claim against me. The arbitration procedures of the New York Stock Exchange should not be used by the Claimants to circumvent their solemn written obligation, clear public policy, and the law.

ELEVENTH: I have never received any of the monies paid over by Claimants to the Newburger Loeb partnership. The partnership itself received the monies and had the benefit thereof, as did the successor corporation formed and promoted by Claimants. All of my dealings with Claimants were for the benefit of the partnership and with the knowledge of its partners. If Claimants feel aggrieved, their complaint should be directed to the partnership or to its successor corporation.

TWELFTH: The Claimants have abused the arbitration procedures of the New York Stock Exchange by commencing this proceeding,

and such abuse -- which will be shown at the hearing to have been willful and malicious -- is a bar to their Statement of Claim.

In view of the foregoing facts and the evidence to be presented, I request that the Statement of Claim be dismissed and that this New York Stock Exchange Board of Arbitration assess all costs against Claimants and order Claimants to reimburse me for all expenses, including attorneys' fees, which I have expended and will expend in defense of the Claimants' meritless and abusive charges.

I will be represented and assisted in these proceedings by the law firm of Golenbock and Barell, 60 East 42nd Street, New York, New York.

Dated: New York, New York
April 10, 1972

Charles H. Gross

CHARLES H. GROSS

NEW YORK STOCK EXCHANGE, INC.

E 763

CHARLES SLOANE and FRED KAYNE,

Claimants,

-against-

STIPULATION

CHARLES H. GROSS,

Respondent.

WHEREAS, Claimants have filed a Statement of Claim and demand for arbitration dated October 18, 1971;

It is stipulated by the attorneys for the parties hereto that the following portions of the Statement of Claim shall be deleted and stricken in their entirety:

Paragraph 8: "An interest in a limited partnership is a security within the definitions utilized in the Act of 1933 and the Securities Exchange Act of 1934."

Paragraph 9: "... violation of Section 12 of the Securities Act of 1933, Section 10 of the Securities Exchange Act of 1934, and...".

Dated: New York, New York
January 14, 1972.

Laventhall & Zicklin

LAVENTHALL & ZICKLIN
Attorneys for Claimants

Golenbock and Barell

GOLENBOCK AND BARELL
Attorneys for Respondent

FILED
AUG 24 1971
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY
DEPUTY

E 764

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHARLES SLOANE, FRED KAYNE,
Plaintiffs,
vs.
CHARLES H. GROSS,
Defendant.

No. 71-264-JWC

MEMORANDUM OPINION

The plaintiffs seek damages for alleged violations of the Security Exchange Acts of 1933 and of 1934, for fraud and breach of contract. They allege that the defendant, a general partner of Newburger, Loeb and Company, a limited partnership formed pursuant to Article VIII of the New York Partnership Law, by false representations induced them to purchase partnership interests in the limited partnership at a cost of $50,000.00 each.

The defendant moves to dismiss the first and second causes of action relating to S.E.C. violations on the ground that the court is without jurisdiction inasmuch as the partnership interest acquired is not a "security" within the meaning of the applicable statutes. In the alternative, defendant moves to stay all proceedings upon the first and second causes of action, and, in any event, to stay all proceedings

upon the third, fourth and fifth causes of action pending arbitration as required by the written articles of limited partnership to which all parties have agreed and as further required by the constitution and rules of the Board of Governors of the New York and American Stock Exchanges by which all the members of the partnership are bound.

The threshold question which defendant's motion to dismiss presents is whether the plaintiffs' interest in the limited partnership is a security within the meaning of the Security Exchange Acts of 1933 or 1934.

Section 2(1) of the 1933 Act, 15 U.S.C. § 77(b)(1), defines "security" as:

> ". . . any . . . certificate of interest or participation in any profit sharing agreement . . . investment contract, . . . or, in general any interest or instrument commonly known as a 'security' . . . "

Section 3(a)(10) of the 1934 Act, 15 U.S.C. § 78(c)(a)(10) defines "security as:

> " . . . any note, . . . certificate of interest or participation in any profit sharing agreement, . . . investment contract . . . or, in general, any instrument commonly known as a 'security' . . . "

The two definitions are so similar that decisions arising under both statutes are applicable here. Tcherepnin v. Knight, 389 U.S. 332 (1967). Although the courts have been inclined to construe the definition of "securities" broadly so as to give investors, generally, the protection which the law anticipates [see S.E.C. v. C. M. Joiner Leasing

Corp., 320 U.S. 344 (1943); S.E.C. v. W. J. Howey Co., 328 U.S. 293 (1946); Tcherepnin v. Knight, supra] they have at the same recognized a distinction between investment contracts to which the Acts are applicable and other investment arrangements not within the spirit of the statutes.

In S.E.C. v. W. J. Howey Co., supra, the Supreme Court was dealing with a prosecution for failure to register a security. The investor was being offered units in a citrus grove development, coupled with a 20 year non-cancellable contract for cultivation, marketing and remitting the net proceeds. The Court held that although the district court had considered the purchase of realty and the contract for maintenance as separate, that in reality they were an inseparable unit by which the investors were to invest money in a common enterprise with the expectation that they would earn a profit solely through the efforts of the promoter or of someone other than themselves. By way of definition the Court said:

> ". . . an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise."

In the cases that have followed, the courts have been reluctant to consider as "securities" investment arrangements where profits depend to some substantial degree upon the efforts of the investor. In Romney v. Richard Prows, Inc., 289 F.Supp. 313 (D.C. Utah N.D. 1968) the plaintiff, an

attorney, contended that he was induced by fraudulent representations of the defendant to enter into a joint venture with the defendant, whereby the plaintiff would contribute his time and effort in the formation of a condominium project, in return for which he was to receive one-third of the profits. The district court held that the plaintiff's interest was not a "security" within the meaning of the Act and that the court was without jurisdiction. See also Chapman v. Rudd Paint and Varnish Co., 409 F.2d 635 (9th Cir. 1969).

Whether the interest in the limited partnership in this case is a "security" or not depends upon the facts, and of course, on a motion to dismiss, we must resolve all factual conflicts in favor of the plaintiffs. We do, however, have certain admitted facts, which we believe establishes, as a matter of law, that the interest in the partnership in question is not a "security" within the meaning of the Securities Acts of 1933 and 1934.

By virtue of the limited partnership agreement, entered into February 26, 1970, the plaintiffs became general partners in Newburger, Loeb and Company, and were so designated in the agreement. The business of the partnership was to be:

> "(a) As underwriters, brokers, dealers or traders, to buy, hold and sell securities and commodities of all types; and
>
> "(b) To act generally as investment brokers, investment advisors and in such other related business activities as to the Executive Committee of the General Partners seems necessary or desirable.
>
> "(c) For the account of the partnership, to invest in, buy, sell and hold all kinds of rights

and properties, whether real or personal." E 768

The agreement contemplates that both plaintiffs should make contributions to capital in the sum of $50,000.00 each. Each general partner was to devote substantially all of his time and efforts in the furtherance of the firm's business and was to engage in no other business except as permitted by the executive committee. The general partners were to carry on, manage and have complete control of the partnership business, each partner having a vote in numbers proportionate to his capital contribution. The agreement then designates an executive committee, which cannot be changed without the unanimous consent of all members whose responsibility it was to manage the affairs and business of the partnership to the exclusion of the other general partners, with certain exceptions. The net profits from the operation of the business of the partnership were to be divided among the partners on the basis of a formula set forth in the agreement.

The plaintiffs, as general partners, were assigned the duty of establishing an office in Century City for the purpose of carrying on the business of the partnership. Both received compensation for their efforts, which was unrelated to the earnings of their particular office, but being a partnership operation, any profits and losses of this office became part of the overall partnership operation. To the extent that the Century City office prospered as result of the efforts of the plaintiffs, the partnership, generally, profited, and likewise to the extent that this office failed to prosper, the affairs of the partnership, generally, were unfavorably affected.

In the light of these admitted facts, it appears to us as a matter of law that plaintiffs' partnership interest

is not a security in that it is not "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third person. . . ." [Emphasis added].

The plaintiffs rely to some extent upon their contention that the executive committee had pervasive power to conduct the affairs of Newburger, Loeb and Company to the exclusion of the other general partners and that any authority exercised by the plaintiffs was specifically authorized by that body. The executive committee, however, is the managing body designated by the general partners in the partnership agreement, and as such have been delegated rather broad powers. But this does not detract from the fact that the earnings of the partnership depend upon the efforts of the plaintiffs and the other general partners who are engaged in carrying on the business of the partnership.

Holding, as we do, that the interest in the partnership is not a "security", it becomes unnecessary to discuss or decide whether the non-waiver provisions of § 14 of the 1933 Act [15 U.S.C. § 77n] or § 29 of the 1934 Act [15 U.S.C. 78cc(a)] are applicable.

We hold, therefore, that this court has no jurisdiction over the subject matter alleged in counts 1 and 2.

Since diversity has been alleged, this court does have jurisdiction over the three remaining counts in the complaint. However, defendant has moved to stay the proceedings on these counts on the ground that these causes of action are arbitrable under the written articles of partnership of Newburger, Loeb and Company and also under the the constitutions and rules of the Board of Governors of the New York and American Stock Exchanges. Even though we assume (but we

do not so hold) that the articles of partnership do not require arbitration of this dispute, the constitutions and the rules of the New York and American Stock Exchanges do. All parties here are either members or allied members within the meaning of § 1351, Article VIII, of the New York Stock Exchange constitution[1/] and all parties here are "partners of member firms" within the meaning of § 9062, Article VIII, of the American Stock Exchange constitution.[2/]

1/ §1351 Controversies Arbitrated

Sec. 1. Any controversy between parties who are members, allied members, member firms or member corporations shall, at the instance of any such party, and any controversy between a non-member and a member or allied member or member firm or member corporation arising out of the business of such member, allied member, member firm or member corporation, or the dissolution of a member firm or member corporation, shall, at the instance of such non-member, be submitted for arbitration, in accordance with the provisions of the Constitution and the rules of the Board of Governors.

2/ § 9062 Duty to Arbitrate

Sec. 1 † Members, member firms, partners of member firms, member corporations and officers of member corporations shall arbitrate all controversies arising in connection with their business between or among themselves or between them and their customers as required by any customer's agreement or, in the absence of a written agreement, if the customer chooses to arbitrate.†

Amendments.

† Amended effective June 1, 1970.

For the reasons hereinabove set forth, counts one and two are hereby dismissed and all proceedings in counts three, four and five are stayed, pending arbitration in accordance with the rules of the New York and American Stock Exchanges.

Attorneys for the defendant shall prepare appropriate order.

DATED: August 24, 1971.

JESSE W. CURTIS
United States District Judge

E 772

mmm

DEFENDANTS' EXHIBIT MMM.

NEW YORK STOCK EXCHANGE, INC.

In the Matter of the Arbitration Between
CHARLES SLOANE and FRED KAYNE,

Claimants

- and -

CHARLES H. GROSS,

Respondent

DECISION

We, the undersigned, being the arbitrators selected to hear and determine a matter in controversy between the above-mentioned claimant and respondent set forth in a submission to arbitration signed by the parties on April 24, 1972 and May 23, 1972, respectively;

And having heard and considered the proofs of the parties, have decided and determined that the claim of the claimant be and hereby is in all respects dismissed;

And further have decided and determined that the counterclaim of the respondent be and hereby is dismissed;

That the costs. $2880.00, be and hereby are assessed against the claimants.

New York, New York
May 7, 1974

STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

E 773

On this 7th day of May , 1974, before me personally appeared Warner G. Cosgrove, Jr. to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

EDWARD W. MORRIS, JR.
Notary Public, State of New York
No. 31-4512853 - New York County
Term Expires March 30, 19[illegible]

STATE OF NEW YORK) SS.:
COUNTY OF NEW YORK)

On this 7th day of May , 1974, before me personally appeared Lawrence Eisele to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

EDWARD W. MORRIS, JR.
Notary Public, State of New York
No. 31-4512853 - New York County
Term Expires March 30, 19[illegible]

STATE OF NEW YORK) SS.:
COUNTY OF NEW YORK)

On this 7th day of May , 1974, before me personally appeared L. Thomas Melly to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

EDWARD W. MORRIS, JR.
Notary Public, State of New York
No. 31-4512853 - New York County
Term Expires March 30, 19[illegible]

STATE OF NEW YORK) SS.:
COUNTY OF NEW YORK)

On this 7th day of May , 1974, before me personally appeared William J. Stoutenburgh, Jr. to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

EDWARD W. MORRIS, JR.
Notary Public, State of New York
No. 31-4512853 - New York County
Term Expires March 30, 19[illegible]

STATE OF NEW YORK) SS.:
COUNTY OF NEW YORK)

On this 7th day of May , 1974, before me personally appeared George T. Thomson to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

[illegible]
Notary Public, State of New York
No. 31-4512853 - New York County
Term Expires March 30, 19[illegible]

DEFENDANTS'
EXHIBIT 000.

E 774

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CABLE: "GOLEGAL"

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RONALD S. KATZ
GEORGE T. SIMON
CHRISTINA S. LEE

March 29, 1974

Mr. Charles Gross
32 The Intervale
Roslyn Estates, New York 11516

Re: Kayne & Sloane v. Gross

Dear Charles:

I am writing in Jud's absence concerning a revised estimate of our legal fee through the conclusion of the New York Stock Exchange arbitration in connection with the matters set forth in Jud's letter to you of December 19, 1973. In that letter, he estimated that our fee would in no event be less than $25,000, and made note of the fact that if fees were to be based on our regular time charges, such fees through November 30, 1973 had already totalled $40,251. Jud explained why our final fee would be less than time charges.

On checking our records, it is noted that time charges through February 28, 1974 now total $58,641. Arthur Silverman estimates that such charges through the end of the arbitration will be approximately $68,000, reflecting the March hearings, and the preparation for and attendance at the April hearings. These figures demonstrate the enormous amount of work which, as you know, has been required to properly prepare for the defense of the claims against you and to disprove what you have always asserted to be false charges.

I advise you that under all the circumstances, our fee will not be less than $33,000 and may be more. I know that this seems like an extraordinary amount to you, but in actuality it is approximately one-third of the claims for out-of-pocket damages which have been asserted against you, and will be less than one-half our anticipated time charges at our regular hourly rates.

Ex AAN-1

DEFENDANTS'
EXHIBIT 000.

GOLENBOCK AND BARELL

E 775

Mr. Charles Gross

March 29, 1974

You have heretofore paid to our firm the sum of $8,500 for fees in connection with this matter, leaving a balance due and owing which is and will be not less than $24,500. You have also paid to us, to date, out-of-pocket disbursements totalling $2,070.98. There is $44.60 remaining due to us for disbursements.

Sincerely,

Donald D. Shack

DDS/pm

Lee Gibson 8-6 for Hart

DATE 1/24/74 P. CHRISTIE

E 776

DEFENDANTS' EXHIBIT PPP.

① PARTNERS' MEETING - at Finley, Kumble, etc. - Sept. 3, 1970

Persky + (Sq. at times taken) FK, NDF, JSchnell, RLS, McG, RT, Chg, Rog-Reg, RLW, RDS, ER, AMN, HJR, EH, JSchafer. [LS side, having taken tail downstream]

Purpose "severalfold"; rough year; effects on capital structure; chgd. mng. ptr. - Exec. Committee; signif. losses.

Kaye came to NYC Aug. 3 (one month later now)

At ex. comm. mtg. Wkago Mon., presented interim report from Fisher + Phu - ") retained them "indefinitely" to give us "extra arms + legs" - internal report to Kaye and Exec Committee - not for ptrs. but for Exec Comm. ") also asked PMM + Co to review P+L @ July 31 re its accuracy. Balanced to audit but unsure whether within 5%. PMM also completed "yesterday" ptrship capital status at July 31.

P+L thru July - lost $1,293,000 (unaud.). New ptrships from March 1st. Trend not improving. Cutbacks began May or June (?) but (e.g.) $14,000 adv. bill for Calif. opng. paid July. Est. $100M loss for Aug. (his est. to NYSE).

'68-'69 losses offset 13 ptrship capital accts. ($2,280,000 approx.)*. Loss taken @ Apr. 26 audit, but vs. firm capital; still not allocated to ptrship accts. (It is on nos. to be presented later.) Meaning: NYSE took it, but ptrs. didn't. $2.1 [illegible] shown on ptrship contract was not there.

* 50% each for LS and 17 partners; since allocation could not be detd. as result of "agreement reached" as explained by Ned Frink.

DEFENDANTS' EXHIBIT PPP.

(2)

Weeden: will be a good move for NL. Will make money + enable us to work w/in framework. Recap- floor business; good rates; no bad office to pay on bad days - but not as profitable on good days. "We had no choice" due to losses, capital ratio, liabilities or contingent liab. (no way to bring in new money w/o full disclosure — at which case "pay will have to be nuts to invest"). Only 5 more mos to lose @ $100 M losses; NYSE will have closed us down after 2 mos. A firm approached us re clearing but we couldn't support its debits (their monthly gross $500 M vs. ours $30 M). Will have kept us a clearing firm if any way to do it. Split 70/30 with penalties @ $43; right to give us notice @ $3 — —. Per-ticket basis on principal business; clear only mutual fund business. Our av. in July $20 incl. ~~[illegible]~~ Perlberg & Bob Brandt (who left to form own firm). Realistic size = $43.

McConville fired for malicious stats. in a pub (w. Schafer-friend) ——

This is spicy info. - all the ghosts in the closet.

(Ned says shd bring out) → NYSE "running very scared". Went to intr. self. Then they called him. Said was consid. capital up; defaults, repaid them bank loans, etc. That was fri. Dr Nov. asked by them to prepare liquidation plan. Examiner showed up Mon. 8/31, re reinvestments. Theise + Kayne bombasted NYSE. (They'd ordered him there 2 wks earlier). NYSE now will not bother us — ratio will be maintained at current 14-15 (as of Aug). - Sold NYSE seat + commodities seats, etc. We're a long way from (the street rumor of) "going out of business."

Weeden (Per 49R question) 450 men in 35 offices - 1500 tix/day (vs. our 500). Good trade capacity. Excited by our interest loan spreads ($60-70 M/mo; about their loss). Their ratio 10:1. We "did a little whaly + lucky ourselves" — they raised $1/2 million + we're to pay $1 million of our litt. ptrs, etc.

DEFENDANTS' EXHIBIT PPP.

Basketball Team - bet one to syndicate; syndicate fell thru.

Present posn about a $390M investment, plus $1.3MM loaned by banks to buyers, + gtd. by 12 partners. Team will have oper. loss for couple of years. Interest cost will run oper. losses. "I changed thrust fm. attempt @ indiv. buyer to public issue - "we're gonna sell $3MM of this stk." - if don't, ptnrs. will be in trouble; it will be sold. Selling it for cost + 5-10%. Tot. cost $3.1MM. Sales price $3MM + $22MM due "down the road." We'll make $1/4MM fee for the deal + get money out if sell it @ $3MM.

Jimmy Settel on only this (+ Cmp. Software) (with Phil Regan, Pres. of team). Prospectus due for submission mid-Sept.; out 4 wks. later - then can sell over a 6-mos. period (intrastate); not in one day. This is prob. the only thing I'll call on your partners to help sell - to clients, buddies, friends. We'll bring in NASD firms - with Sid Lunt (Buffalo) - big syndicate. "Your hides." Will be $450M min. after legal fees, etc.

[Cleveland's similar deal oversold in 14 hours in April.]

Small houses the place to market intrastate & Reg A stuff; big firms shy away

This is a "legitimate product", Ned; historically a franchise has never been sold @ a loss. Timing good. Exhib. season starts Oct. 13.

One NY Plaza: NL ent. agrmt. Oct. or Nov. '69 to lease 20M Ft.^{2} No provision to get out of either 35M Ft.^{2} @ 5 Hanover. "Ned") negot. settlmt. of $46M either @ $35 over 12 mos. or flat. (Need about 10M Ft.^{2}). [Refered to this as a $6MM obligation.] Liabilities that pervade the investment + create pot'l bankruptcy. [HS settled 18x the footage (16 floors) for $4.8MM].

5 Hanover Sq: Wk ago Wed. met w. landlord re leaving entire bldg. (av. cost $7.50 -) Resident. Now running to sublet it all + get 10M Ft.^{2} of classy - efficient space elsewhere. Not a serious problem. 8-9 mos. Floors cost only $5-6.

(4)

DEFENDANTS' EXHIBIT PPP.

14th St. sublet; others not. 40 Exchge. Place another problem:
3½ yrs left @ $35 M/yr. Couldn't break that.

Assets on books for "improvements" — no recovery value for partitions, etc. $250 M. ($30 M spent fixing up 40 Exchg Place)
And can't move the space at the old rates.

HJR: Have we tried Real Est. agents? [Kayne/Frank: "More than that" - tried games under the table, bribes, etc. This is war; it's a tough world.]

Proj. $100 M/month loss thru end of year (even tho may be a Nixon mkt. thru Election Day. But "rays of sunshine" - ① an oil deal ($120 M → 180 M commissions; Calif. gets ½); ② 3 inv. banking fees pending in Calif. (tot. $50-100 M).

Plus: $400 M cost break NY Plaza lease
$100 M conversion cost (incl. $30-40 M severance; dupe facilities while clear fails, overlap order rooms, etc.)
$100 M in unsecured debits (Ned has atty working on it)
$50-100 M in other lease settlements.
$200 M loss not yet in P+L (the Tepper affair) HJR: Insured? NDF: Insurer called us to believe w/ coverage). Then submitted claim too late
$50 M fine - irregularities (charge previous ptnship?)

Total ~~$1,750,000~~ projected just above
and ~~1,000,000~~ 1,293 M over losses to July
$2,743,000

Bet. Gross - Miller-G+B (attys) - alot of time spent trying find alt. insurance co., etc.
Kayne tried to negot. in last 24 hrs., but the Clearance agmt had't been signed.
[NYSE wd. close down if insur. exist
Ned + Fred unwilling run this risk.]
[ERH: Sue? Ned! Yes — we're suing everybody — good chance recover ... 3-4 yrs from now

less Sal.
less int.
less corp. gns.
net loss for yr.

Other contingent liabilities:

1) Basketball team: $450 investment and a team to run that will lose money

2) Leases - see above

3) Lew Bracker - had spl. arngt. to repres. on W. Coast a Corp. Finance banker. Cost us $700M (shown in P+L above). Came to Kayne att'n today that has repres. self as ptr. NL+Co. Have stationery, etc. $30M claim in today, plus other attachments already rec'd (of £130M).

4) Joe Searles - [Ned]: In today w his att'y - feels we're oblig. to support him in accustomed style (and he'd hate to see us get bad pub lately). Said verbal representations made.

5) Legal fees -

17+ terminated retainer agt. with Golenbock - Barel will be eager to conduct audit; accounting fees will be signif. Simon + ~ (Charlie's accountants) haven't billed yet [Ned + Fred: "What did they do?"] RLN - DK, RLS: Set up P+L accounting, [Chg - laughed].

Receipt of partnership resignations

Chg - effective Sept. 30 (Chg request - must leave money @ risk a term for 12 mos.; treated as Ltd. Capital for 12 mos.) - cf. next page

E/O mN
Wachs
Brown
Irle
} Ltd. ptrs. {Ned: 210M out Sept 17, when subord. agmt runs out
expects to get 2% over prime @ WEH, plus 4% on haircut value of stock

DEFENDANTS' EXHIBIT PPP.

NYSE relationships – have feeling that our relat. is good now. (They don't care if we go broke as long as we don't hurt our clients.)

Trading losses – syndicate + other. See below
↓

(Persky re withdrawal of capital): (Charlie's) Counsel frankly concedes that contract could also be treated as general capital for 12 mos. The 12-mos. period is clear; the treatment of the capital is unclear. (2 contradictory paragraphs.) Persky, repres. the partnership, will not give opinion at this time [on the "less than lucid" contract]. [AMN - intent of drawers-up was treatment as limited capital; Persky rejoinder - any partner could require court (or arbitration) test – not predictable.]

Trading + investments: "Startled" to find that our securities on which have taken a bath. Partly leftover pieces, etc. Syndicate dept. not aware they were there. Kayne sold them at the market yesterday.

Firm Trading account has lost —— in the Pth. (marked to market). An unrep'd. Tyco Labs warrant valued @ $900 – thinks worth less. [Firm & arbitrage accounts have suffered substantial loss.] (per RDS question); Rosen trading account has made substantial ($300+ gross) profits. But losing him on Sept. 18. Fine relationship but no way to keep.

after marking: Chg - 20,000 CNV etc. – total loss $150 M OR thereabouts

(Re Peggy re attracting Rosen): unable to attract anyone with these liabilities. But these liabilities are being put to bed.

Further comment on projections (at my req.) includes shedding of 9th floor, clearing (no change in net cost), loss of Rosen, tho perhaps low on recip. business, etc.

"One other thing" ("hadn't wanted to mention") — conversion may discover further missing securities. [Last audit Apr. 26 — potentially unemployed cage employees still working there]. (AMN insured)

Capital accounts: Big sheet of monthly extensions, indiv. sheets showing indiv. capital position. (Ned explained) — Unaudited but reconciled to Apr. 26 audit. Included all losses of every sort (incl. decreased value of memberships, other assets, but not contingent liabilities above mentioned as not in P+L). "Disputed amount" is the '68-'69 mess. "We" (Kaye) are taking pos'n that will have the '68 partners sign a resolution of disputed amount at time capital paid out.

As of July 31, 1970, general { "stated capital" = $2,431,250
actual net capital = $881,425

Of this $881M, $390M is in basketball team.
Paying $400M to Sol Atlas will remove all general ptnship. capital. Further pyts will eat into Ltd. ptrs.' money; each gen'l ptr. guarantees ltd. partners against loss — whatever your percentage, all your assets are pledged to limited partners (as explained by Ned).

(over)

Recovery of capital —
(1) Sell the ball team
(2) partners owe money to the partnership.

As of July 31, about $700M is owed by some partners to the ptsh. It is due + payable now, and will become very important when tax refunds are ~~due~~ made next Spring. At the Exec. Comm. mtg., after lengthy discs. with Persky, ") distributed an assignment of tax refunds to extent such refunds due. [Some ptrs. overpaid on taxes, unaware of basis offsets in '68-9]. Partners who owe should review with own atty., sign, and return to Bob Persky. Reason: we're all honest, but ptrship. shd have protection if one should die before then. [afterward (Persky) - wrong reason - merely as a lien on the money.]

Relevance of stated capital (per Net): affects interest paid or owed (deducted from or added to actual capital).

Gross raised ques. as to whether "stated capital" needed to be maintained. Wagner is charging based on position price to 1970 losses or seat write-downs. [HJR became upset; Persky pointed out that "fair" treatment of people w. positive capital posns, which wd. require add'l interest pyts., and involve breakeven etc., thus our fiduciary responsibility to the limited partners (as well as to each other).] K: The people with the largest deficits have already given their assurances (the not yet signed, due consultation with attys.).

[The Kayne point, at March 1 — the "stated capital" wasn't what we said it was (eg. HJR "stated" 10M, actual $1M+). And there's no way to run from the liabilities that permeate the capital.

(9)

DEFENDANTS' EXHIBIT PPP.

Examination of the books (not pointed out) is to be done at your own expense. But there will be no disbursements to general partners without careful analysis of all the contingencies. [Ned - told that the cost of making these figures certifiable is $100-150 m.]

(Searles left on July 31 owing us $350 but claims from us.)

Cash Flow (my question): will be a priority item after Fisher (Nuta?) freed up from conversion work.

Kayne would be generous on severance but Therese trying to be economical of cash.

Prior to going public on the basketball team, must pay off bank loans to have a clean prospectus; will have to use limited partners' money to do that. ($2.8 mm in Ltd. ptrs' money - about ½ cash, ½ stock).

Does not plan to stop attracting people, giving guarantees, etc.

Ned: about a month ago, any of 6 things could have put us out of business. Only 1 is left - the ball team (worthless in liquidation).

Atlas (my Plaza) had higher bidder when we signed; would give it all now @ $2 /ft.² less (but not the 11 m ft.² we'd still like).
[It is believed to cost $10 m /ft.² to move.]

Beware of confidentiality - re phones, etc.

Adjourned

afterward (me, Kayne, Frank, Persky): mtg. next day w. Charley - will get withdrawal of resignation, nicely or otherwise. Was supposed to be later. - all on Kayne's "game plan". He was amazed by lack of questions + opposition.

DEFENDANTS' EXHIBIT PPP.

(10) —(after meeting, cont'd)— E 785

Charley set to resign a year ago, but knew no succession mngmnt.; now feels surer in resigning. (but "game plan" is to get him not to).

Marty: feelers indicate Fred + Ned really like me (Risher + Mac don't know me well enuf — I can't even tell them apart!)
Might be pleasantly surprised by how well things work out.
Perky really does repris. whole partnership, + its best long-term interest.

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

DEFENDANTS' EXHIBIT QQQ.

E 786

QQQ ltr

GRIEVANCES (Employer business practices)
failure terminate NY Plaza lease
" " 24th floor "
Equilend (start-up in earnings met.)
Bail team - bad concept; failure to sell properly or at all
lies to NYSE; failure notify of debt
lies to Sonne + Kayne
hooking w. swindler (4% contract)
(Searles)
misapprop. of committed capital (fraud)
failure file insur. claim of 150 m
Expend. on furniture + alterations of 27m + more on NY Plaza
trading + arbitrage accts - lost $150+ or so; ignoring contractual prohibition

FIRINGS

not sell team; bankrupt
pull out;
expose lies to authorities

Defts Ex 87

(LAWS)

Higgs already sued Exec Comm. & McDonnell — Sued Bkd, partners, NYSE.
In place of RLS-LP, held get out
Tough, then deal to cut losses (pay. 115/in, 6 mos.)
non-volun. withdrawal → negotiable to 6th. pt.

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N.Y.

RRR TA

Co.

DEFENDANTS' EXHIBIT RRR.

E 787

August 25, 1970

TO: All General Partners

FROM: Mr. Fred Kayne

In order to give all General Partners a complete briefing on Newburger, Loeb & Co. I have scheduled a special meeting of the General Partners to be held on September 3rd, 1970 at 4 P.M. at the law office of Finley, Kumble, Underberg, Persky & Roth.

Mr. Robert S. Persky is our attorney and the meeting will be held in the main Law Library on the eighth (8th) floor. This meeting will be mandatory and everyone should be present and on time.

Thank you.

Fred Kayne

Fred Kayne,

FK:pm

477 Madison @ 51

EXH. For Ident.
DATE P. CHRISTE

DEFENDANTS' EXHIBIT ___. E 78

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEWBURGER, LOEB & CO., INC. as assignee of Claims of David Buckley and Mary Buckley,	
Plaintiff,	71 Civ. 685
-against-	
CHARLES GROSS, MABEL BLEICH and GROSS & CO.,	NOTICE OF MOTION FOR SUMMARY JUDGMENT (On Behalf of Alex Aixala)
Defendants,	
NEWBURGER, LOEB & CO., a New York Limited Partnership, ANDREW M. NEWBURGER, ROBERT L. NEWBURGER, LEO STERN, ROBERT L. STERN, RICHARD D. STERN, JOHN F. SETTLE, HAROLD J. RICHARDS, SANFORD ROGGENBURG, ADOLPHUS ROGGENBURG, NED D. FRANK, ALEX AIXALA, FRED KAYNE, ROBERT MUH, PAUL RISHER, CHARLES SLOANE, ROBERT S. PERSKY, FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH, a Partnership, and LAWRENCE J. BERKOWITZ,	
Additional defendants on Counterclaims.	

S I R S :

PLEASE TAKE NOTICE that, upon all the pleadings and proceedings heretofore had herein and the affidavit of ALEX AIXALA sworn to the 28th day of June, 1972, and the annexed statement in accordance with Rule 9(g) of the General Rules of this Court, the undersigned will move this Court at a motion part thereof, to be held in Courtroom 506, United States District Courthouse, Foley Square, New York, New York on the 25th day of July, 1972, at 10:00 o'clock in the forenoon of that day or as

DEFENDANTS' EXHIBIT SSS.

E 789

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

NEWBURGER, LOEB & CO., INC. as assignee of Claims of David Buckley and Mary Buckley,

Plaintiff,

-against-

CHARLES GROSS, MABEL BLEICH and GROSS & CO.,

Defendants,

NEWBURGER, LOEB & CO., a New York Limited Partnership, ANDREW M. NEWBURGER, ROBERT L. NEWBURGER, LEO STERN, ROBERT L. STERN, RICHARD D. STERN, JOHN F. SETTLE, HAROLD J. RICHARDS, SANFORD ROGGENBURG, ADOLPHUS ROGGENBURG, NED D. FRANK, ALEX AIXALA, FRED KAYNE, ROBERT MUH, PAUL RISHER, CHARLES SLOANE, ROBERT S. PERSKY, FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH, a Partnership, and LAWRENCE J. BERKOWITZ,

Additional defendants on Counterclaims.

- x

71 Civ. 685

AFFIDAVIT IN SUPPORT OF SUMMARY JUDGMENT ON BEHALF OF ALEX AIXALA

STATE OF FLORIDA)
) ss.:
COUNTY OF DADE)

ALEX AIXALA, being duly sworn, deposes and says:

1. I reside at 1221 Venetian Way, Miami, Florida and am a defendant in the above named action. A motion for dismissal on the ground of lack of jurisdiction is currently pending on my behalf and on behalf of the other additional defendants on the counterclaims, and plaintiff in this action. However, in the event that motion should not be granted as to me, as alternative

relief I ask that summary judgment be granted in my favor.

2. I reside in Miami, Florida and am engaged in the doing of business in that City. Sometime during the Summer of 1970, I was introduced by mutual friends to Robert Persky, Esq., of the law firm of Finley, Kumble, Underberg, Persky and Roth. Mr. Persky was introduced to me as an attorney of ability and integrity.

3. In December, 1970, I had occasion to be in New York and had lunch with Mr. Persky. At that time Mr. Persky discussed with me whether I would be interested in loaning $1,000,000 dollars to a corporation to be formed to operate a New York brokerage house. The terms of the transaction were outlined to me by Mr. Persky.

4. Briefly, those terms were that I could make a loan of capital in that amount by pledging securities having such a value with my continuing to receive dividends on said stock, as well as interest with respect thereto. My loan would also have a priority status in that I would be a subordinated lender having priority as to other lenders. I would also be entitled to buy a then unspecified number of shares of the non-voting common stock of the new corporation to be formed, at a price of five cents per share.

5. As outlined to me at that time I was aware that such an investment had substantial risk aspects. Nevertheless, my financial situation at the time was such that I was prepared to

approximate amount in exchange for interest at a fixed rate on said amount and the right to buy shares of stock in Newburger, Loeb & Co., Inc.

4. On February 11, 1971 Aixala consummated the foregoing transaction and as part thereof received 210,000 shares of the non-voting common stock of Newburger, Loeb. No change has occurred in this situation as of the present time.

5. The foregoing constitutes the total involvement of Aixala in the situation alleged in the complaint.

make this investment. Thus, in addition to other assets, I had approximately $1,000,000 of Bacardi stock available for such investment purposes. Then, and now, I had every faith and confidence in the ability of Mr. Persky. Accordingly, I told Mr. Persky during the course of that luncheon conference that I would make available $1,000,000 in the form of said Bacardi stock as a loan to the new corporation to be formed pursuant to the above terms. Shortly thereafter I returned to Miami.

6. In January, 1971, I forwarded to Mr. Persky a power of attorney authorizing him to execute necessary documents on my behalf to consummate this transaction. Subsequent to February 11, 1971, I was advised that the transaction, as outlined to me by Mr. Persky, had been completed. I arranged to have the necessary transfer of Bacardi stock made.

7. At present I continue in my status as a lender to Newburger, Loeb & Co., Inc. and as the holder of 210,000 shares of the non-voting stock in that Corporation which I purchased at five cents per share on February 11, 1972, pursuant to the original agreement as outlined to me by Mr. Persky.

8. Apart from casual meetings with various personnel of Newburger, Loeb & Co., Inc., subsequent to February 11, 1971, that is the total extent of my involvement in this matter.

9. At no time did I have any connection with the Newburger, Loeb & Co. partnership. Thus, I was not a partner nor

a subordinated lender in that entity; I was not an employee of that entity; I did no business with that entity. At no time did I ever meet with, or have any contact with Charles Gross, Mable Bleich, Jeanne Donoghue or Gross & Co. The first time that any of these names came to my attention was when I received copies of the pleadings in this action.

10. I am advised that in the moving papers submitted by the Gross defendants I am characterized as a "promoter" of Newburger, Loeb & Co., Inc. I deny that allegation categorically. The sole extent of my involvement in that Corporation is as an investor as hereinbefore set forth.

11. The allegations of impropriety and wrongdoing in the Amended Answer and Counterclaims insofar as I am concerned, are totally untrue and devoid of any merit. At no time did I conspire with anyone. At no time did I commit any unlawful, wrongful or improper act.

By reason of the foregoing, I ask that summary judgment be granted in my favor.

/s/
ALEX AIXALA

Signed and Sworn to before
me this 28th day of June, 1972.

/s/
Notary Public

DEFENDANTS' EXHIBIT SSS. E 794

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

NEWBURGER, LOEB & CO., INC. as assignee of Claims of David Buckley and Mary Buckley,

Plaintiff,

-against-

CHARLES GROSS, MABEL BLEICH and GROSS & CO.,

Defendants,

NEWBURGER, LOEB & CO., a New York Limited Partnership, ANDREW M. NEWBURGER, ROBERT L. NEWBURGER, LEO STERN, ROBERT L. STERN, RICHARD D. STERN, JOHN F. SETTLE, HAROLD J. RICHARDS, SANFORD ROGGENBURG, ADOLPHUS ROGGENBURG, NED D. FRANK, ALEX AIXALA, FRED KAYNE, ROBERT MUH, PAUL RISHER, CHARLES SLOANE, ROBERT S. PERSKY, FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH, a Partnership, and LAWRENCE J. BERKOWITZ,

Additional defendants on Counterclaims.

- x

71 Civ. 685

DEFENDANT, DEP'S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE [PURSUANT TO RULE 9(g) OF THE GENERAL RULES]

1. ALEX AIXALA ("Aixala"), named herein as an additional defendant on counterclaim, resides in Miami, Florida.

2. At no time did Aixala have any connection or dealing with the partnership of Newburger, Loeb & Co. either as a partner, creditor, employee or in any other manner.

3. In December, 1970 Aixala, during the course of a conversation with Robert Persky, agreed to lend $1,000,000 to Newburger, Loeb & Co., Inc. in the form of Bacardi stock in that

DEFENDANTS' EXHIBIT SSS.

soon thereafter as counsel can be heard, as and for alternative relief, for an order granting ALEX AIXALA, summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, on the ground that there is no genuine issue as to any material fact, and that defendant is entitled to judgment as a matter of law, and for such other and further relief as to the Court may seem fit and proper.

Dated: New York, New York
June 28, 1972

Yours, etc.,

Herbert F. Roth

Herbert F. Roth,
a member of the firm of
FINLEY, KUMBLE, UNDERBERG,
PERSKY, ROTH & GRUTMAN
Attorneys for ALEX AIXALA
an additional Defendant on
Counterclaims
Office & P. O. Address
477 Madison Avenue
New York, New York 10022
(212) 371-5900

TO: GOLDEN, WIENSHIENK & MANDEL, ESQS.
Attorneys for Defendants
CHARLES GROSS, et al.
10 East 40th Street
New York, New York 10016

RICHENTHAL, ABRAMS & MOSS, ESQS.
Attorneys for NEWBURGER, LOEB &
CO. and "additional defendants"
122 East 42nd Street
New York, New York 10016

HART & HUME, ESQS.
Attorneys for Defendants
ROBERT S. PERSKY and FINLEY,
KUMBLE, UNDERBERG, PERSKY & ROTH
10 East 40th Street

DEFENDANTS' EXHIBIT TTT.

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

E 796

MEMORANDUM

Date January 25, 1971 /66/

To H. Paul Burak and Murray Cohen

Subject Newburger, Loeb & Co. -

From William S. Friedman

Closing 6895/001

ISSUES:

1. Does Newburger, Loeb & Co., a New York limited partnership, have the authority under state law to transfer all of its assets to Newburger, Loeb & Co., Inc., a Delaware corporation, where the corporation assumes only the known scheduled liabilities of the limited partnership? Yes.

2. If Newburger, Loeb & Co. is or will be rendered insolvent by the proposed transaction, does the transfer of its assets constitute a fraudulent conveyance within the meaning of §§271 and 277 of the New York Debtor and Creditor Law? Yes.

3. Is the consent of all of the limited partners of Newburger, Loeb & Co. to the transfer of assets required where the limited partners have all given notice of an election to withdraw? Yes.

DISCUSSION:

1. It is Hornbook law that a partnership has the same right as an individual to make a bona fide disposition of its assets, even if such disposition will render the partnership incapable of continuing its business. N.Y. Juris. §260. No express or implied power to sell the assets is required in the Articles of Partnership which each limited partnership is required to file. The power to sell the property of a limited partnership is an inherent power that every limited partnership has, subject only to the laws protecting the rights of creditors and the restrictions, if any, which may appear in the Articles.

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DEFENDANTS' EXHIBIT TTT.

E 797

New York's Partnership Law requires ~~xxxbyx~~ that a disposition of the property of a limited partnership which would make it "impossible to carry on the ordinary business of the partnership" be consented to or ratified by all of the limited partners. McKinney's Partnership Law §98. The New York Partnership Law clearly does not per se prohibit the type of transaction contemplated by Newburger, Loeb & Co. ("Newburger").

Article 6 of the U.C.C. governing bulk sales is in no way applicable to the proposed transaction. Newburger is not subject to this Article which applies only to those enterprises "whose principal business is the sale of merchandise from stock". U.C.C. 6-102(3). The official comment to the above subsection states, in part, that

> "transfers of investment securities are not covered by the Article, nor are transfers of money, accounts receivable, chattel paper, contract rights and negotiable instruments . . ."

Furthermore, Article 6 specifically exempts transfers "to a new business enterprise organized to take over and continue the business" where the debts of the transferor are assumed and the transferee receives nothing "except an interest in the new enterprise junior to the claims of creditors". U.C.C. §6-103(7)

The resignation of Charles H. Gross as a general partner of Newburger does not affect the power or authority of Newburger to enter into this transaction. Section 109 of the Partnership Law provides

> "[t]he retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners

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E 798

(a) Under a right so to do stated in the certificate, or

(b) With the consent of all members.

The Newberger Articles of Partnership provide that the "death, adjudication of incompetence or withdrawal of a General Partner shall not terminate the term of the partnership ...." Newburger, Loeb & Co., Restated Articles of Limited Partnership §2.1.

2. The fact that all the assets, but probably not all the liabilities, are being transferred to or assumed by the Corporation does not per se render the transaction invalid as a fraud on creditors. Section 277 of the New York Debtor and Creditor Law provides that

> "[e]very conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is made or the obligation is incurred,
>
> ....
>
> (b) To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners."

The solvency or insolvency of a limited partnership is determined by adding the probable present net worth of each general partner and the amount, if any, of unpaid subscriptions from the solvent

DEFENDANTS' EXHIBIT TTT.

E 799

limited partners to the present salable value of the partnership property and subtracting therefrom the probable liabilities of the partnership. McKinney's Debtor and Creditor Law, §271. It is apparently unclear whether Newburger is insolvent, as defined above, at the present time or will become so should the transaction be consummated. If Newburger is or becomes insolvent the deal is a fraudulent conveyance as to partnership creditors, unless Newburger, apart from the individuals having an interest in Newburger, does in fact receive fair consideration for the transfer of its assets. The "consideration" inuring to the partnership is the assumption of scheduled liabilities in return for which all assets are to be transferred. The assumption of bona fide debts and liabilities clearly constitutes something of value in this context. 37 C.J.S. §153. The question is whether the total liabilities assumed is "fair" in reference to the assets transferred.

In Leventhal v. Spillman, 234 F. Supp. 207 (S.D.N.Y. 1964) aff'd. 362 F2d 264, the transfer by an insolvent of all his assets used in business to a newly-formed corporation in exchange only for the assumption by the Corporation of all of the insolvent's business liabilities standing alone was found not to be a fraudulent conveyance where the liabilities assumed exceeded the assets transferred and the corporation also received a loan from the wife of the insolvent transferor. This case seems very much in point since a condition precedent to Newburger's obligation is the purchase of a specified amount of common stock by Messrs. Muh, Risher, Kayne and Aixalá. See, Agreement, dated December

DEFENDANTS' EXHIBIT TTT.

31, 1970, Article 7(e).

E 800

It may also be significant that although Newburger is transferring all of its assets, it is not leaving itself "completely denuded". The personal wealth of each of the general partners is still available to satisfy the claims of those creditors, if any, whose liabilities are not assumed. To the extent that this may be a good business deal for those partners, it may also prove beneficial to the "unscheduled creditors" whose chance of finding a solvent partner is increased by the fact that any consideration received by the general partners may be available to satisfy his claim. Cf. Freedman v. Baron, Rott & Samuels Inc., 31 App. Div. 2d 610, 295 N.Y.S. 2d 874 (1st Dept. 1968) where the court questioned a transaction which completely denuded a corporation of its assets in return only for the assumption of its obligations, holding that whether or not the assumption of liabilities by the transferor corporation is fair consideration depends in part on the value of that promise and presents a triable issue of fact.

While the corporation's promise to pay the scheduled liabilities of Newburger may constitute fair consideration that issue cannot be determined from the draft of the Agreement since it depends on an evaluation of the actual assets and liabilities being transferred.

If the transaction is a fraudulent conveyance, §§278 and 279 of the Debtor and Creditor law set out the rights of creditors with matured and unmatured claims, respectively. A matured creditor may either have the conveyance set aside to the extent necessary to satisfy his claim or disregard the conveyance and levy execution directly on the assets conveyed. A creditor with an unmatured claim may commence a proceeding in court and the court may (i) restrain the transaction, (ii) appoint a receiver, (iii) set aside the conveyance as the circumstances may require.

If Newburger is insolvent, regardless of the relative value of the liabilities assumed and the assets transferred the transaction would constitute a preference as to any unscheduled creditor, and, in the event that Newburger enters bankruptcy within four months of the transaction, it could be set aside, by the receiver or trustee in bankruptcy. A preference does not per se constitute a fraudulent conveyance. If there is no intent to hinder or delay any creditor and if fair consideration is received by Newburger, the unscheduled creditor may simply be left out in the cold unless there is some fact in the transaction which constitutes a fraudulent intent. See 2 Rowley on Partnerships §58.9. In New York

> "only a little more than the bare preference will suffice to tip the scale against the transfer, and that 'little more' can be a formal defect." Leventhal v. Spillman, supra.

Where fair consideration was found, the transfer by an insolvent individual was nevertheless held to be a fraudulent conveyance where the assets were not transferred for the unrestricted

benefit of the creditors. The ultimate holding in Leventhal was that

> "where intended preference is present, there can be no reservation to the transferor or to a third party; such third party intervention brings no privilege of retention based on new value where the whole scheme is designed to prefer one class of creditor and preclude the rights of another class." 234 F. Supp. at 212.

Under this strict rule, it is quite possible that if Newburger is insolvent, the transaction constitutes a fraudulent conveyance as to any unscheduled creditor since the transferor corporation is to enjoy a privilege of retention.

Nevertheless, it is still possible to distinguish the Newburger transaction from that involved in Leventhal. First of all, in Leventhal the transferor assumed only a small part of the insolvent transferee's liabilities while accepting the great bulk of his assets. In our case, known liabilities are being assumed and only unmatured and contingent liabilities, which Newburger only assumes it has, are not being assumed. Furthermore, in Leventhal, the whole transaction was a scheme to retain "salvageable values" in the transferor corporation for the ultimate benefit of the transferee by excluding his business assets from the reach of his non-business creditors. In the Newburger transaction, on the other hand, there is a sound business reason, which resounds ultimately to the benefit of the great bulk of creditors, for the transferor to refuse to assume the unscheduled liabilities, since there is no reasonable way in which the total amount of such liabilities can be ascer-

tained. If insistence on a total assumption would make the transaction impossible, all the creditors would suffer while if the deal goes through, the unscheduled creditors still have the general partners unlimited liability to go against. By analogy to the "failing-company doctrine" of anti-trust law, if Newburger is responding to a business necessity and the unscheduled creditors are left out in the cold only for business reasons, the transaction may pass muster. In Leventhal the stock in the transferor corporation was all owned by the wife of the insolvent transferee, so that the going concern value was insulated from the creditors whose liabilities were not assumed. This element is totally lacking in Newburger. All the consideration going to the general partners will be available to the unscheduled creditors to satisfy their claims if and when they mature. Furthermore, in Leventhal a class of creditors - business creditors - were preferred while non-business creditors were left out. In Newburger no class of creditors are discriminated against for any ulterior motive - all known creditors of whatever type are assumed and unknown creditors left out. For the above reasons there is at least a possibility that the transaction will not be found to constitute a fraudulent conveyance even if Newburger is insolvent, providing, of course, that fair consideration is given by the transferee corporation.

3. The New York Limited Partnership Law expressly requires "the written consent or ratification by all the limited partners"

to the proposed transaction. §98, McKinney Partnership Law, supra. A majority or even an extraordinary majority are insufficient and there are no provisions as in the BCL for appraisal and buy-out of the dissenting limited partners. The dissent of even one limited partner is sufficient to deprive Newburger of the authority to consummate the transaction.

Consent is used in this section as a word of art. It is permissible for limited partners to give their prior written consent to the extraordinary sale of all the assets of the partnership before any such sale is contemplated and in total ignorance of the terms of any such sale. In real estate partnerships it is common for the articles of partnership to contain such an automatic consent, usually on the condition that the terms of the transaction receive the express approval of limited partners holding 2/3 to 90% of the limited capital. The Newburger articles, however, contain no such provision and unanimity among the limited partners is therefore required.

Two recent cases involving real estate syndications illustrate the importance of the consent of the limited partners. In Executive Hotel Association v. Elm Hotel Corp., 41 Misc. 2d 354, 245 N.Y.S. 2d 929 (Civil Ct. N.Y. City 1964), the sale of the partnership assets, in this case a leasehold, by the general partner without the consent of the limited partners was nullified because of the general partner's failure to obtain the consents of the limited partners. While the case involved ele-

ments of fraud and misrepresentation, the invalidity of the sale turned directly on the failure to meet the statutory requirements of §98. In Mist Properties v. Fitzsimmons Realty Co., 228 N.Y.S. 2d 406, 410 (Sp. Term Kings Cty. 1962) a provision in the articles of partnership granting the general partners the unqualified power to sell or convey all assets was upheld where there was no showing of fraud or over-reaching. The conveyance was held to have been "specifically contemplated and provided for".

The Newburger Articles of Partnership do not either expressly or by implication authorize the general partners or the Executive Committee to undertake this type of transaction. The Executive Committee is given

> "full power and authority on behalf of all partners of this firm at any time and from time to time to manage the affairs and business of the partnership, to the exclusion of the other General Partners . . ." Articles 4.3

This authorization gives the Executive Committee only the authority the general partners have. It does not constitute "a consent or ratification of the specific act by all the limited partners". The management of the affairs and business of the partnership is not so broad as to embrace a transaction "which would make it impossible to carry on the ordinary business of the partnership".

In the Articles of Partnership the limited partners, except those acting as fiduciaries, appoint Robert Stern to act as

their true and lawful attorney in fact

> "to make, execute; and deliver, acknowledge and file (i) certificates of limited partnership . . . (ii) such other instruments as may be deemed desirable by the said attorney in fact upon the termination of the partnership. Articles §12.5

This authorization does not obviate the need for the signatures of all the limited partners on the proposed agreement either by its terms or by fair implication therefrom.

The general partner authorized to act as attorney in fact for all the limited partners may do so only with respect to amendments to the certificate or on the termination of the partnership. The partnership does not terminate until December 31, unless the general partners elect to sooner terminate pursuant to §4.1. Even in the event of termination, however, the language of §12.5 would not appear to constitute a "consent or ratification of the specific act" of the transfer of all assets.

The fact that all of the limited partners in Newburger have given notice of an election to withdraw their capital does not obviate the need for their written consents even if their election was made more than six months ago and Newburger is now obligated under its Articles of Partnership to return all of their capital to them. See, Newburger Loeb & Co., Restated Articles §7.1(b). The essence of being a limited partner is having capital at the risk of the business. Until that capital is in fact withdrawn in accordance with the Partnership Law, a

limited partner remains such. Unlike a general partner, a limited partner may not resign at will. Furthermore, a partnership may not allow the withdrawal of a limited partner's contribution.

> "if at the time, the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners." McKinney's Partnership Law §102(1)(b).

The General Partners of Newburger do have the right to require the withdrawal from the partnership of any limited partner "upon a finding by the Executive Committee that such Limited Partner has conducted himself . . . contrary to the best interests of the partnership. Newburger Loeb & Co., Restated Articles §7(2)(b).

Assuming that the Executive Committee can make such a finding on the basis of a refusal of a limited partner to consent to the proposed transaction, the mere finding does not terminate the non-consenting limited partner's status as such. He would remain a limited partner at least until his contribution was returned in full at a time when the partnership has sufficient property to pay all its liabilities and the certificate or articles are amended to show the withdrawal of the limited partner and his contribution. McKinney's Partnership Law §105(1).

Any limited partner whose election to withdraw was made more than six months ago has the right to have the partnership dissolved.

DEFENDANTS' EXHIBIT TTT.

E 808

I understand that all limited partners of Newburger have waived "without prejudice" any claim for repayment of their contribution until some time in February. Section 105(4)(b) grants a limited partner the right to have the partnership dissolved where the partnership property is insufficient for the payment of "other liabilities" and "the limited partner would otherwise be entitled to the return of his contribution." Since the waivers were "without prejudice" it would seem that the limited partners have not waived their right to have Newburger dissolved.

W.S.F.

DEFENDANTS' EXHIBIT UUU.

Draft of Transfer Agreement.

DEFENDANTS' EXHIBIT UUU. 1/27/71

E 809

AGREEMENT dated as of the 31st day of December, 1970, between NEWBURGER, LOEB & CO., INC., a Delaware corporation (hereinafter referred to as the "Transferee"), and NEWBURGER, LOEB & CO., a limited partnership organized and existing pursuant to Article VIII of the New York Partnership Law (hereinafter referred to as the "Transferor").

W I T N E S S E T H :

WHEREAS, the Transferee has been formed by Messrs. Robert Ehh and Paul Risher (the "Stockholders") and the Transferor, together with the Stockholders and certain others who desire to purchase the stock of the Transferee, intends to transfer funds and assets to the Transferee (pursuant to Section 351 of the Internal Revenue Code of 1954, as amended), so that it may carry on the business presently conducted by the Transferor;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter contained, it is agreed as follows:

1. Assets To Be Transferred. Transferor agrees to transfer, and the Transferee agrees to accept, all of Transferor's assets, real and personal, tangible and intangible, vested or contingent, of any nature whatsoever, subject only to the liabilities specifically assumed hereunder (hereinafter sometimes called the "Property").

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2. Transferor's Liabilities Assumed by Transferee. Transferee agrees to assume all liabilities of the Transferor shown on its balance sheet as of December 31, 1970, as set forth on Schedule A attached hereto, all liabilities specifically set forth on Schedule A2, and all liabilities incurred by Transferor from December 31, 1970 to the Closing Date in the ordinary course of business. Except for the liabilities assumed hereunder, the Transferee does not assume any other liabilities of the Transferor including but not limited to the liability of the Transferor and any one of its members for federal, state and local taxes of any kind or nature.

Picks up Taxes

3. The Closing. The Closing of the transfer will take place at 10:00 A.M. on the 25th day of January, 1971 at the offices of Finley, Kumble, Underberg, Persky & Roth, 477 Madison Avenue, New York, New York, or at such other adjourned date and place as shall be mutually agreed upon in writing by the parties (including, for this purpose, the limited partners of Transferor). Such date and time of closing are herein defined as the "Closing".

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4. Transferor's Representations and Warranties. Transferor hereby represents and warrants that:

(a) Transferor is a duly organized and validly existing limited partnership pursuant to Article VIII of the New York Partnership Law and has the power and authority to execute and deliver this Agree-

ment, the execution of this Agreement is not in violation or contravention of the Restated Articles of Limited Partnership of the Transferor dated as of February 26, 1970 or any other agreement to which the Transferor or any member thereof is a party or is otherwise charged; and said Articles of Limited Partnership are and on the Closing Date will be in full force and effect and since February 26, 1970 to the date of this Agreement has not been amended, altered or modified in any way and between the date of this Agreement and the Closing Date shall not be amended, altered or modified in any way;

(b) Transferor has good and marketable title in and to any of the assets transferred pursuant to Section 1 above free and clear of any liens, encumbrances and restrictions, except such as are expressly assumed hereunder as set forth in Schedule A. Transferor has authority and power to transfer and assign all agreements and leases to be transferred pursuant to Section 1 above and will have obtained by the Closing consents where necessary to such assignment and transfer;

(c) Transferor has, and will have on the Closing, possession of the assets, Property and leaseholds to be transferred hereunder and no other person has or on the Closing Date will have any rights or possession or use or control of any part of the assets and Property transferred hereunder;

(d) Transferor is not, and on the Closing Date will not be, in breach or default of any of its material obligations under the leases (except for payment of certain rent), the clearing agreement with W. E. Hutton & Co., ~~underwriting agreements~~ or other agreements assigned under Section 1, all of which are set forth in Schedule B, and, between the date of each of the aforesaid instruments and the date of this Agreement, Transferor has not entered into any amendment, modification or alteration of any of the leases, the clearing agreement, underwriting agreements or other agreements hereinabove referred to, except as specifically agreed to in writing and disclosed to Transferee;

(e) Transferor is not, and on the Closing Date will not be, a party to any other material agreement other than the agreements set forth in Schedule B; and between the date of this Agreement and the Closing, Transferor will not enter into any other agreement other than in the normal and ordinary course of business without the prior written consent of Transferee;

(f) Except as disclosed in Schedule C, there is no litigation, action, suit or administrative proceeding pending or threatened against the Transferor which might materially and adversely affect the assets and business of the Transferor being transferred hereunder

or which might interfere with the transactions contemplated by this Agreement; and

(g) Except as disclosed in Schedules A and A2 attached hereto and made a part hereof, there are no liabilities or other obligations of the Transferor owed to either the New York Stock Exchange or the American Stock Exchange, including, but not limited to, floor charges and other amounts which are a lien on the memberships in each such exchange, and between the date of this Agreement and the Closing, all such liabilities will be discharged as they accrue unless the Transferee specifically agrees in writing to the contrary.

5. Transferee's Representations and Warranties. Transferee hereby represents, warrants and agrees that:

(a) Transferee is a corporation duly organized, existing and in good standing under the laws of the State of Delaware;

(b) Prior to the Closing, Transferee will have taken all necessary corporate and legal action to authorize the execution, delivery and performance of this Agreement, and the execution, delivery and performance of this Agreement by Transferee and on the Closing Date will not be in contravention of Transferee's certificate of incorporation or its By-Laws or any contract or agreement to which Transferee is a party or subject.

6. Conditions Precedent to Transferee's Obligations. Each and every obligation of Transferee to be performed on the Closing Date or thereafter, as the case may be, shall be subject to the satisfaction prior thereto of the following conditions unless specifically waived in writing by the Transferee:

(a) The representations and warranties made by Transferor in this Agreement shall be true on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date;

(b) Transferor shall have performed and complied with all of its obligations under this Agreement which are to be performed or complied with by it prior to or on the Closing Date;

(c) Transferor shall have delivered to Transferee a certificate of the Executive Committee of Transferor certifying in such detail as Transferee may specify the fulfillment of the conditions set forth in this Section 6;

(d) Transferee shall have received from counsel for Transferor a written opinion dated as of the Closing Date addressed to Transferee and satisfactory to Transferee's counsel in form and substance as to the power and authority of Transferor to enter this

Agreement and consummate the transactions contemplated hereby;

(e) All proceedings to be taken in connection with the transaction contemplated by this Agreement, and all documents incident thereto, shall be reasonably satisfactory in form and substance to Transferee; and Transferor shall have made available to Transferee for examination the originals or true and correct copies of all records and documents relating to the business and affairs of Transferor which Transferee may request in connection with said transaction;

(f) There shall have been delivered to Transferee valid assignments of all leases, contracts and other agreements to be assigned and delivered hereunder, without material change in terms and conditions (except as provided in this Agreement), together with all necessary consents to any such assignments endorsed thereon or attached thereto;

(g) No investigation, suit, action or other proceeding shall be threatened or pending before any court or governmental agency which in the opinion of Transferee's counsel is likely to result in the restraint, prohibition or the obtaining of damages or other relief in connection with this Agreement or the consummation of the transactions contemplated

hereby, or in connection with any claim against Transferor or the persons named as General Partners of Transferor under the Articles of Partnership of Newburger, Loeb & Co., dated February 26, 1970, (the "1970 Partners") (the "1970 Agreement"), not disclosed by the Schedules attached hereto.

(h) The transfer of the business, property and assets of Transferor in the manner contemplated by this Agreement shall have been duly and validly authorized and approved by all the General Partners of the Transferor ~~in accordance with the provisions of the Restated Articles of Limited Partnership of the Transferor dated February 26, 1970,~~ and Transferor shall have delivered to Transferee evidence, in form satisfactory to Transferee's counsel, of such authorization and approval and of compliance with any other statutory and regulatory requirements for the valid consummation by Transferor and Transferee of the transaction contemplated by this Agreement;

(i) Between the date of this Agreement and the Closing, there shall not have been any material adverse change in the condition, financial or otherwise, of the business of the Transferor to be transferred under this Agreement and there shall not have been any breach of or default in the Transferor's obligations under or its performance of the provisions of Section 8 of this Agreement;

(j) The transfer of the memberships on the New York Stock Exchange and the American Stock Exchange

to stockholders of the Transferee shall have been approved by each of the Exchanges in accordance with their respective applicable rules and regulations, and the documents evidencing such approval shall be delivered to the Transferee at the Closing;

Post-Closing

(k) At or prior to the Closing, the Transferor shall have changed its name from Newburger, Loeb & Co. to any other substantially dissimilar name prior to the Closing, shall deliver at the Closing its written authorization for the use in perpetuity of the name Newburger, Loeb & Co. and names similar thereto containing the name "Newburger" by the Transferee and the written authorization of Robert L. Newburger and Andrew M. Newburger to use said name and names similar thereto for the Transferee in perpetuity at the Closing;

Get waiver

(l) The Transferor shall deliver at the Closing a written waiver executed by a majority in interest of its members of the non-competition provisions of paragraph 7.1(a) of the Restated Articles of Limited Partnership of the Transferor in favor of all members of the Transferor who make a written request for such waiver to enable them to participate in the activities of the Transferee to the fullest extent;

(m) Transferor shall have cooperated with and aided Transferee in transferring from the employ of Transferor to the employ of Transferee all those registered representatives as to which Transferee gives Transferor notice that it shall employ them, such cooperation and aid to include all filings necessary or otherwise required by any securities or commodity exchange, the Securities and Exchange Commission, the National Association of Securities Dealers or any other administrative body to effectuate such transfer of employment;

(n) Transferee shall have been approved by the New York Stock Exchange and the American Stock Exchange as a member firm, and shall have been registered as a broker-dealer with the Securities and Exchange Commission and all other necessary governmental agencies;

(o) There shall have been delivered to Transferee assignments, in form and substance satisfactory to counsel to Transferee, by Transferor, [redacted] of any "back office" recoveries and claims applicable to the period January 1, 1967 to date, net of expenses, counterclaims, set-offs and third-party claims with respect to back office operations (collectively "Set-offs"). If Set-offs are paid by Transferor and not otherwise recouped, Transferee shall repay to Transferor an amount equal to such unrecouped Set-offs to the extent of net recoveries by Transferee.

7. Conditions Precedent to Transferor's Obligations. Each and every obligation of Transferor to be

performed on the Closing Date shall be subject to the satisfaction prior thereto of the following conditions, unless specifically waived in writing by Transferor: E 819

(a) Transferee's representations and warranties contained in this Agreement shall be true at and as of the Closing Date as though such representations and warranties were made at and as of the Closing Date;

(b) Transferee shall have performed and complied with its obligations under this Agreement which are to be performed or complied with by it prior to or on the Closing Date;

(c) Transferee shall have delivered to Transferor an opinion of Transferee's counsel, dated as of the Closing Date, satisfactory to Transferor in form and substance, as to Transferee's corporate existence and good standing and that the execution and performance of this Agreement have been authorized by the Board of Directors of Transferee;

(d) Transferee shall have delivered to Transferor certified copies of the resolution of its Board of Directors authorizing the execution, delivery and performance of this Agreement, and the issuance of the securities and obligations required hereby;

7. A. In addition to the items set forth in Paragraph 10, the following transactions shall take place prior to closing: E 820

(a) 8,000 shares of Bacardi Corp. shall have been deposited in a senior subordinated account with Transferee under a subordination agreement expiring no earlier than December 31, 1973;

(b) Messrs. Robert Muh and Paul Risher shall have entered into employment agreements with Transferee commencing on the Closing Date and terminating December 31, 1972. Such employment agreements shall provide for salaries at the rate of $35,000 per year or commissions at the rate then paid to registered representatives, whichever is higher. Additional compensation may be granted to Messrs. Risher and Muh in any fiscal year provided that the aggregate of all compensation paid to them does not exceed 16% of Transferee's net profits in each year (before deduction of such compensation).

(c) Fred Kayne shall have entered into an employment agreement with Transferee commencing the Closing Date and terminating December 31, 1972 whereby he is to be paid by commissions at the rate then paid to registered representatives;

(d) There shall have been delivered to Transferor, for delivery to Transferee at the Closing, (1) a three-year note of Robert Newburger to Transferee in the amount of his capital deficit as at November 30, 1970, secured by an assignment of any and all federal and state income tax refunds due or to be due to him

together with a power of attorney to Robert S. Persky, or such other person as may be acceptable to the parties, as trustee, to collect same and turn such over to Transferee; (2) three-year notes of Robert L. Stern and Harold J. Richards to the order of Transferee in the amount of 75% of their respective capital deficits as at November 30, 1970, secured by assignments of any and all federal and state income tax refunds due or to be due to them, together with a power of attorney to Robert S. Persky, or such other person as may be acceptable to the parties, as trustee, to collect same and turn such over to Transferee; and (3) a three-year note of Andrew Newburger to the order of Transferee in the amount of 75% of his capital deficit as at November 30, 1970, secured by an assignment of the first $200,000, one-half of the next $100,000 and three-quarters of any excess of any and all federal and state income tax refunds due or to be due to him, together with a power of attorney to Robert S. Persky, or such other person as may be acceptable to the parties, as trustee, to collect same and turn such over to Transferee. The capital deficits shall be computed by Peat, Marwick, Mitchell & Co., which computation shall be final and binding:

Just-
ment
75%
capital
deficit

(e) The purchase of common stock by Messrs. Muh, Risher, Kayne and Aixala as set forth below shall

have been consummated.

E 822.

8. Conduct of Transferor's Business Pending Closing Date. From and after the date of this Agreement and until the Closing Date:

(a) Transferee and its authorized representatives shall have full access during normal business hours to all properties, books, records, contracts and documents of Transferor, and Transferor shall furnish or cause to be furnished to Transferee and its authorized representatives all information with respect to the affairs and business of Transferor as Transferee may request;

(b) Transferor shall carry on its business diligently and substantially in the same manner as heretofore and shall not make or institute any unusual or novel purchase, sale, lease, management, accounting or operation;

(c) Neither Transferor nor its members shall enter into any contract or commitment or engage in any transaction not in the usual and ordinary course of business without the prior written consent of Transferee;

(d) Neither Transferor nor its members will sell or dispose of any assets, other than securities, with an original cost in excess of $100 without the prior written consent of either Muh or Risher;

(e) Without the prior written consent of the Transferee, Transferor will not create any indebtedness, other than that incurred in the usual and ordinary course of business, incurred pursuant to existing contracts disclosed in the Schedules attached hereto, or incurred pursuant to commitments permitted hereby, or that reasonably incurred in doing the acts and things contemplated by this Agreement;

(f) Transferor and all property, real and personal, owned or leased by Transferor and its subsidiaries will be adequately insured against all ordinary and insurable risks; and all property shall be used, operated, maintained and repaired in a normal business manner;

(g) Transferor will use its best efforts (without making any commitments on behalf of Transferee) to preserve its business organization intact, to keep available to Transferee the present key officers and employees of Transferor requested by Transferee, and to preserve for Transferee the present relationships of Transferor and its members with customers and others having business relations with them;

(h) Transferor shall not do any act or omit to do any act, or permit any act or omission to act, which will cause a material breach of any material

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not paying attention with

contract, commitment or obligation of Transferor;

(i) Transferor will duly comply with all applicable laws as may be required for the valid and effective transfer of the property, assets and business contemplated by this Agreement;

(j) Transferor will furnish to Transferee all the information concerning Transferor required for inclusion in any statement or application made by Transferee to the New York and American Stock Exchanges and any governmental body in connection with the transaction contemplated by this Agreement, and Transferor represents and warrants that all such information furnished to Transferee for such applications or statements shall be true and correct in all respects without omission of any material fact to be stated to make the information not misleading;

(k) It is understood and agreed that between the date of this Agreement and the Closing hereunder, certain members of the Transferor are or may become shareholders, directors, officers or employees of the Transferee; that such members of the Transferor will continue to function in their capacities as such in the normal and regular conduct of the Transferor's business with all the rights, powers and duties as they presently hold or

owe without any additional liabilities or obligations to the Transferor beyond those imposed upon them by the terms of the abovementioned Restated Articles of Limited Partnership; and that no self-dealing, conflict of interest or other fiduciary duties shall be imputed or otherwise charged to them by reason of their continuing to function simultaneously as members of the Transferor and shareholders, directors, officers or employees of the Transferee between the date of this Agreement and until such time as they shall withdraw;

(l) Risher, Muh & Co., Inc. will be retained by Transferor to assist its management, at the rate of $5,834 per month. The consent of either of Messrs. Muh or Risher shall be required for any expenditure or commitment in excess of $100.

9. Issuance of Securities and Stock. The following securities and stock will be issued by Transferee at the Closing:

(a) Subordinated convertible notes in such amounts as set forth in Schedule C, in the aggregate principal amount of $ (said amount being the 60% aggregate value of the securities and cash contributed by the limited partners of Transferor as at November 30, 1970 or December 31, 1970 as to securities still held or the amount realized (without commissions) if any such securities were sold between those dates, and unpaid interest to December 31, 1970). The principal of each of such notes shall be payable 50% on Decem-

ber 31, 1973 and 50% on December 31, 1974, and they shall bear interest at 2% over the prime rate as designated from time to time by Chemical Bank, New York, New York; but in no event shall interest ever be greater than the higher of 9% or the then prime rate. All interest to be payable quarterly on a mandatory basis, but only out of earnings of the current year to date. In the event that earnings for the year permit interest in excess of the interest previously paid for such year, such excess interest shall then be paid (up to the maximum interest payable); in all other respects, the interest on such notice shall be non-cumulative. The notes shall be convertible at the option of the holder into an aggregate of 250,000 shares of non-voting common stock of Transferee at the option of the registered holder, with usual provisions for price antidilution. These subordinated convertible notes are subordinate to the subordinated accounts described in section 9A below, in all respects, including liquidation and payment of principal, interest (except for interest to be paid out of earnings), the delivery of dividends, interest upon securities and capital gains distribution upon securities. Therefore, no payment may be made on these notes when there is a default with respect to the subordinated accounts. They will contain restrictions, until they are paid, against (i) the payment of dividends or other distributions on, or redemptions of, any capital stock of Transferee (except regular dividends on the Preferred Stock to be issued pursuant to paragraph 9(c) of this Agreement); (ii) operations out of the ordinary course of the brokerage business; and (iii) such other matters as may reasonably be mutually agreed;

(b) ~~As an inducement for the owners of the subordinated accounts to extend their loans,~~ Transferee will duly authorize and issue at the Closing non-

voting common stock representing 3-1/2% of its issued and outstanding common stock on the date of Closing pro rata E 827 to such owners at $5 per share;

(c) With respect to each $100 in the capital accounts of former or present 1970 Partners of Transferor (other than Charles Gross and Lewis Bracker) whose capital accounts are not in deficit, calculated as of November 30, 1970, one share of 5% convertible preferred stock, $100 par value, of Transferee each share of which shall be convertible into 5 shares of non-voting common stock of Transferee (which conversion rate shall be subject to normal price anti-dilution provisions). Dividends on said convertible preferred stock shall be payable quarterly on a mandatory basis, but only out of earnings of the current year to date. In the event that year end earnings permit dividends in excess of the dividends previously paid for such year, such excess dividends may then be paid (up to the maximum dividend payable); in all other respects, the dividends on such preferred stock shall be non-cumulative. No dividend shall be paid nor provision therefor be made in any year with respect to any other class of stock (other than the Series A Preferred) prior to provision for payment in full of the dividend on the 5% convertible preferred stock. The relative rights, preferences, and limitations of the 5% convertible preferred stock of the Transferee shall not be subject to alteration, amendment or change, nor shall any class of stock equal or superior in rights to the 5% convertible preferred stock be created, except upon the written consent of the holders of 66-2/3% of such convertible preferred stock. The 5% convertible preferred stock shall have a-

preference over all other classes of stock (other than Series A Preferred) upon the dissolution of, or upon any distribution of substantially all the assets of, the Transferee equal to its par value, and (ii) be non-voting (except in those situations provided in the certificate of incorporation or under Delaware law under which such preferred stock shall have voting rights to vote as a class). Under no circumstances shall any shares of preferred stock be redeemed prior to the payment in full of the subordinated accounts described in Section 9A below and the subordinated notes described in Paragraph 9(a).

(d) With respect to each $40.00 of the aggregate value of the securities and cash contributed by the limited partners of Transferor as at November 30, 1970 or December 31, 1970 as to securities still held or the amount realized (without commissions) if any such securities were sold between those dates, and unpaid interest to December 31, 1970, one share of Series A Convertible Preferred Stock, $100.00 par value, of Transferee, each share of which shall be convertible into 11 shares of non-voting common stock of Transferee (which conversion rate shall be subject to normal price anti-dilution provisions). Dividends on said convertible preferred stock shall be payable quarterly on a mandatory basis, but only out of earnings of the current year to date. In the event that year end earnings permit dividends in excess of the dividends previously paid for such year, such excess dividends

may then be paid (up to the maximum dividend payable); in all other respects, the dividends on such preferred stock shall be non-cumulative. No dividend shall be paid nor provision therefor be made in any year with respect to any other class of stock prior to provision for payment in full of dividend on the Series A Preferred Stock. The relative rights, preferences, and limitations of the Series A Preferred Stock of the Transferee shall not be subject to alteration, amendment or change, nor shall any class of stock equal or superior in rights to the Series A Preferred Stock be created, except upon the written consent of the holders of 66-2/3% of such convertible preferred stock. The Series A Preferred Stock shall have a preference over all other classes of stock upon the dissolution of, or upon any distribution of substantially all the assets of, the Transferee equal to its par value, and (ii) be non-voting (except in those situations provided in the certificate of incorporation or under Delaware law under which such preferred stock shall have voting rights to vote as a class). Under no circumstances shall any shares of Series A Preferred Stock be redeemed prior to the payment in full of the subordinated accounts described in Section 9A below and the subordinated notes described in Paragraph 9(a).

(e) It is understood that the subordinated convertible notes and Series A Preferred Stock described in subparagraphs (a) and (d) above, shall be distributed by Transferor to the limited partners of Transferor under the 1970 Agreement (other than persons whose capital is deemed to be treated as limited partners' capital by reason of their resigning as general partners during 1970) in proportion to the value as of November 30, 1970 of the securities and cash contributed by each of them or December 31, 1970 as to securities still held or the amount realized (without commissions) if any such securities were sold between those dates, and unpaid interest to December 31, 1970); and that the 5% convertible preferred stock described in subparagraph (c) above shall be distributed to former or present 1970 Partners of Transferor (other than ~~Charles Gross and Lewis Bracker~~ Those listed on Schedule E) whose capital accounts are not in deficit (calculated as of November 30, 1970) on a basis of one share for each $100 in such account.

9A. Assignment of Subordinated Accounts.

(a) As referred to herein, the "subordinated accounts" are the accounts of Albert Dworkin, Milton Lobel, Irving Lobel, Geza Polaty, Kinko Polaty,

Shirley P. Newburger and Betty N. Newborg. At the Closing, the subordinated accounts and the subordination agreements relating thereto will be assigned to the Transferee, the obligations of the Transferor under such subordination agreements will be delegated to and will be assumed by the Transferee, and the subordination agreements covering such accounts will be extended to December 31, 1972. The owners of the "subord. ted accounts", listed above, expressly consent to such assignment, assumption and extension. The Transferor agrees that its existing obligations, if any, in relation to the present subordinated accounts will remain unchanged as of the date of this agreement notwithstanding the extension of the maturity dates of such accounts to December 31, 1972, and notwithstanding the assumption of the primary obligations to the owners of such accounts by the Transferee; provided, however, that the obligations, if any, of the Transferor to the owners of such subordinated accounts shall be reduced pro rata and dollar for dollar by the amounts paid to the Transferee on the notes referred to in paragraph 7(h). Where necessary, the subordination agreements will be amended to provide for an interest rate of 4%. Transferee will not sell the securities covered thereby unless, in management's opinion, Transferee is in danger of (i) insolvency, (ii) violation of the capital require-

ments as determined according to the rules of the New York Stock Exchange, or (iii) unless the owner of the E subordinated account has given permission for such a sale. Transferee expressly agrees that prior to the sale of any securities in the subordinated accounts, all securities in accounts of officers designed as capital accounts will have been sold;

(b) There shall be mandatory prepayments of the subordinated accounts upon the following terms: (i) each owner of a subordinated account will promptly receive a prepayment of cash and/or securities (securities being valued at their fair market value) in his subordinated account which is equal to his pro rata share, as among the subordinated lenders, of 25% of all tax refunds collected by the trustee under Section 7(h) of this agreement; (ii) Transferor and Transferee shall take all necessary steps to require W. E. Hutton & Co. to deliver all monies and securities owing or to be owed to Transferor by W. E. Hutton & Co. pursuant to a subordination agreement dated September 15, 1970 and each owner of a subordinated account will promptly receive a prepayment of the cash and/or securities (securities being valued on their fair market value) in his subordinated account which is equal to his pro rata share, as among the subordinated lenders, of 30% of all cash and/or securities received (securities being valued at their fair market value) from W. E. Hutton & Co. in excess of $200,000; (iii) Transferee covenants and agrees that, as promptly as possible after the execution of this Agreement in final form, it will cause Transferee to deliver to the holders of the subordinated accounts all dividends, interest and

distributions of capital gains held by Transferor at that time and Transferee covenants that all such dividends, interest and distributions of capital shall, upon receipt in the future, be promptly delivered to the owners of the subordinated accounts.

10. Transactions at the Closing.

(a) At the Closing, Transferor will deliver to the Transferee the following:

1. Assignments of all leases, agreements, memberships and all other rights to be transferred pursuant to section 1 with consents thereto of the other parties where necessary.

2. Bills of sale with covenants of warranty, endorsements and assignments and other good and sufficient instruments of transfer as shall be effective to vest in Transferee good and marketable title to the property to be conveyed hereunder.

3. Such documents as are necessary or otherwise required to transfer the memberships from the New York Stock Exchange and the American Stock Exchange.

4. A notarized certificate of the appropriate member of the Transferor dated the Closing Date to the effect that all representations and warranties of the Transferor hereunder are true and correct as of the Closing Date and that all agreements and obligations of the Transferor to be performed under this Agreement have been performed.

5. The opinion of Transferor's counsel as required under the provisions of section 6 above.

(b) At the Closing, Transferee will deliver

the following:

1. Its subordinated convertible notes in accordance with the provisions of section 9(a) above. E 834

2. Its non-voting common stock in accordance with the provisions of sections 9(b) and 11(g) hereof.

3. Its 5% convertible preferred stock in accordance with the provisions of section 9(c) above.

4. A written assumption of the liabilities of the Transferor to be assumed by the Transferee in accordance with the provisions of section 2 above.

5. A certificate signed by a president or a vice president and a secretary or assistant secretary of the Transferee dated the Closing Date to the effect that all representations and warranties of the Transferee hereunder are true and correct as of the Closing Date and all agreements and obligations of the Transferee to be performed under this Agreement have been performed.

6. The opinion of Transferee's counsel required under the provisions of section 7 above.

11. Additional Agreements.

(a) Transferee will pay all sales, transfer and documentary taxes payable in connection with the sale, conveyances, assignments, transfers and deliveries to be made from Transferor to Transferee hereunder;

(b) From time to time hereafter at

Transferee's request, whether on or after the Closing Date, and without further consideration, Transferor, at its expense, will execute and deliver such further instruments of conveyance, transfer and assignment as Transferee reasonably may request in order more effectively to convey, transfer and assign to Transferee any of the property to be sold hereunder, including the use of Transferor's best efforts to obtain such consent as may be necessary from others and will execute any other documents necessary or otherwise required in order to consummate the transactions contemplated by this Agreement:

(c) In the event that the aggregate net losses of Transferee from operations shall exceed $350,000 for any period of four consecutive calendar months or less ending prior to January 1, 1973 or exceed $600,000 in any fiscal year ending prior to January 1, 1973, the holders of a majority in dollar amount of subordinated convertible notes or of the subordinated accounts shall have the option, exercisable in writing within 30 days after the last day of such period, to require that the Transferee liquidate, in which case the officers, directors, and stockholders of Transferee shall take all necessary steps to effectuate such liquidation; provided, however, that such option

shall not be exercisable at any time when the net worth of Transferee is greater than $750,000.00.

(d) Within thirty (30) days after the Closing, each subordinated lender and each subordinated convertible noteholder shall receive from Transferee a balance sheet as at the Closing. Not later than the 25th day of each month prior to January 1, 1975, or until their indebtedness is paid, each subordinated lender and subordinated convertible noteholder shall receive from Transferee a balance sheet and a profit and loss statement for the preceding month and for the year to date;

(e) With respect to accounts receivable arising from capital deficits from general partners or former general partners of Transferor, Transferee shall forgive 25% of the accounts receivable with respect to Robert Stern, Harold Richards and Andrew Newburger (for the purpose of this sentence, the deficit of Harold Richards shall be computed without consideration of the $50,000 he borrowed from a bank and contributed shortly prior to November 30, 1970). None of the foregoing will be in a management position with respect to Transferee. With respect to any present or former general partners not to be in a management position with Transferee whose capital deficit is less than $20,000, the entire amount of such accounts receivable will be forgiven;

(f) Provided all of the conditions of this Agreement have been met, Mr. Alex Aixala agrees to deposit prior to the Closing 8,000 shares of Bacardi Corp. common stock in a senior subordinated account with the Transferee under a subordinated loan agreement, reasonably satisfactory to Finley, Kumble, Underberg, Persky & Roth, counsel to the Transferee, expiring no earlier than December 31, 1973;

(g) On the Closing Date, the Transferee shall sell to the persons listed on Schedule E, the number of shares of common stock of the Transferee listed next to their names on such Schedule at a price of $.05 per share. Messrs. Robert Muh and Paul Risher agree to purchase on the Closing Date the number of shares set forth opposite their names on such Schedule; Alex Aixala agrees to purchase on the Closing Date the number of shares set forth opposite his name at the par value thereof; and they agree to use their best efforts to obtain prior approval of the New York Stock Exchange for the purchase of such shares.

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(h) Transferee agrees that no cash dividend will be declared or paid on any common stock of Transferee until the subordinated accounts referred to in Section 9A and the convertible subordinated notes referred to in Section 9(a) hereof have been paid in full.

(i) In the event that there is a public offering of Transferee's common stock of any class, the non-voting common stock provided for hereunder shall be converted to the same class of common stock as being offered to the public.

(j) Transferee agrees that, any time it intends to register any of its securities under the Securities Act of 1933, as amended, for any one of Messrs. Muh, Risher or Kayne (the "Management Group"), Transferee will notify the persons receiving non-voting common

stock or convertible subordinated notes (the "Stockholders") of its intention so to do and upon written request from any Stockholder, given within fourteen (14) days after the receipt of such a notice, use its best efforts to cause shares of such Stockholder acquired under this Agreement, to be registered (if registration is required at such time) at Transferee's expense (other than transfer taxes, and underwriting commissions, spreads and fee) under said Securities Act, with respect to the first such registration, and at the Stockholder's expense with respect to additional registrations, if such registration is necessary in the opinion of counsel to Transferee in order for Stockholders to sell their shares without violating the Securities Act of 1933, as amended. Stockholders, collectively, shall not be entitled to register a greater percentage of the shares owned by them in the aggregate, than the percentage of shares owned by Management Group registered by such group.

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12. Indemnity. Transferor hereby indemnifies and saves Transferee harmless from and against any and all losses, damages, claims, actions, judgments, proceedings, or causes of action whatsoever and all expenses, including attorneys' fees, arising out of or relating to any liability of Transferor not expressly assumed hereunder by Transferee and any breach of any warranty, representation or agreement of the Transferor herein contained;

12A. Waiver. The parties hereto agree that no closing hereunder shall occur if either party waives the performance of a condition precedent described in Sections 6 or 7 of the Agreement and such waiver is not approved by a majority in dollar amount of the owners of the subordinated accounts listed in Section 9A herein and of the owners of the subordinated convertible notes provided for in Section 9(a) herein.

13. Miscellaneous Matters.

(a) This Agreement contains the entire understanding between the parties and may not be modified, altered or amended except by a writing signed by both the parties;

(b) The representation, warranties and agreements of the parties hereto shall survive the Closing under this Agreement;

(c) All notices or other communications required or issued hereunder shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, certification and postage charges prepaid as follows:

To the Transferor: 5 Hanover Square
New York, N.Y. 10004

To the Transferee: c/o Finley, Kumble,
Underberg, Persky &
Roth
477 Madison Avenue
New York, N.Y. 10022

(d) This Agreement and the construction thereof shall be governed by the laws of the State of New York.

(e) This Agreement may be executed in counterparts, all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the 31st day of December, 1970.

NEWBURGER, LOEB & CO., INC. (Transferee)

By_____

NEWBURGER, LOEB & CO. (Transferor)

By_____

(Andrew M. Newburger)

By_____
(Robert L. Newburger)

By_____
(Leo Stern)

By_____
(Robert L. Stern)

By_____
(Richard D. Stern)

By_____
(Edward R. Holt)

By_____
(William McGovern)

By_____
(Harold J. Richards)

Ly_____
(Sanford Roggenburg)

By_____
(Edward Rubin)

By_____
(Julius Schnall)

Each of the undersigned limited partners of NEWBURGER, LOEB & CO. hereby consents to and accepts the provisions of the foregoing Agreement:

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LIMITED PARTNERS:

ELLA L. NEWBURGER, ANDREW M. NEWBURGER, ROBERT L. NEWBURGER, and DONALD L. NEWBORG, as Executors of and Trustees under the Last Will and Testament of Lester M. Newburger, Deceased

_____

MAY U. NEWBURGER, and GEORGE B. LEVY, as Executors of and Trustees under the Last Will and Testament of Morris Newburger, Deceased (a limited partner as of November 30, 1970)

_____

GERALD N. FRANK _____

WILLARD S. IRLE _____

JEANNE G. DONOGHUE _____

MABEL BLEICH _____

JACK WACHS _____

SAUL A. BROWN _____

JOSEPH W. QUARTE _____

PHILIP SHULMAN _____

Each of the undersigned owners of subordinated accounts in Newburger, Loeb & Co. consents to and accepts the provisions of the foregoing Agreement to the extent that those provisions are applicable to him; provided, however, that, except as expressly set forth in the proviso of the fourth sentence of Section 9A, the undersigned do not waive, release or discharge any claim or cause of action or right to sue Newburger, Loeb & Co., or any of its partners, general or limited, past or present, or its employees, past or present, or W. E. Hutton & Co., for any reason whatsoever, except that the undersigned will forbear to enforce any such claim, cause of action or right to sue so long as there is no default by the Transferee of any obligation to the undersigned or any material default by any other party under the terms of the foregoing Agreement and the subordination agreements as extended.

ALBERT DWORKIN _____

MILTON LOBEL _____

IRVING LOBEL _____

GEZA POLATY _____

KINKO POLATY _____

SHIRLEY P. NEWBURGER _____

BETTY N. NEWBORG _____

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SCHEDULE C

LITIGATION

Litigation Where Newburger, Loeb is Defendent	Attorney Rep.	Claim
1. Belmont Franchising Matter (several cases) (a)	Golenboch & Bareli	$ 19,000
2. Lincoln Securities (b)	"	15,400
3. Murad, Onig & Ogene - NYSE	Finley, Kumble	15,000
4. Jaslow Investment Co. & Arthur & Yetta Shapiro (c)	O. K. Fraenkel	[illegible] (100,000 punitive 14,325 comp.)
5. Pershing & Co. (Westec Loss)	O. K. Fraenkel	17,600
6. American Nat'l Bank & Trust Co. of Chicago	O. K. Fraenkel	85,000 (25,000 punitive 60,000 comp.)
7. Maryland National Bank v. Blum & N/L Jacobs v. Blum & N/L	Finley, Kumble	82,418.75
8. Marie Louise Jam	O. K. Fraenkel	30,000 est.
9. Jacobi, American Assn. of Sec. Reps. v. N/L et al (d)	Finley, Kumble	(Amount not specified in complaint unascertainable)
10. George Polk (e)	Finley, Kumble	137,000 (covered by insurance)
11. DiJulio, et al v. Digicon Inc., et al (f)	Dewey, Ballantine	66,000
12. Lewis Bracker (rent claim 1 mo. Beverly Hills)	Finley, Kumble	3,500
13. Hershberg	O. K. Fraenkel	2,000
14. Simonoff, Pyser & Citron	Finley, Kumble	22,500
15. Fashion Center Building Corp. v. N/L and Andrew Newburger (rent claim 2 mos. 525 7th Ave)		1,500
16. Peter Crotty		100,000

Defts Exhibit 10/29/74

DEFENDANTS' EXHIBIT VVV.

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SCHEDULE C
page 2

Potential Litigation in which Newburger, Loeb and/or any of its Partners and/or the Transferee may be defendant		Claim (est.)*
1.	Seymour Kott	$31,000
2.	Jenny Grunbacher (alias "Marie Alvarez")	$ 5,000
3.	Charles Gross, Mabel Bleich, Jeanne Donoghue and Lewis Bracker	Amounts related to capital account, threatened claims arising from this agreement and damages arising from "non-competition" clause in partnership agreement
4.	Sheldon Silver	$30,000
5.	First National City Bank (EduWorld)	$240,000
6.	Joseph Tart, Marjorie Keller & Robert Mullarkey	Libel claim
7.	Abraham & Co.	$11,000 (approx.)
8.	Complaints and claims, not otherwise referred to herein, received prior to closing from customers, brokers, dealers and banks in connection with the carrying on of its business, none of which exceeds $10,000. The Transferee assumes such claims in the maximum aggregate amount of $100,000.	

* Estimate for identification of claim only, rather than limitation of liability.

(DEFENDANTS' EXHIBIT VVV.

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N. Y.

Potential Litigation in which Newburger, Loeb and/or any of its Partners and/or the Transferee may be Defendant

		Claim (est.)*
1.	Seymour Kott	$31,000
2.	Jenny Grunbacher (alias "Marie Alvarez")	5,000
3.	Charles Gross	Amounts related to capital account; ~~plus threatened injunction, plus~~ damages arising from "Non-Competition" clause in partnership agreement.
4.	Sheldon Silver	30,000
5.	Jeanne Donoghue	~~75,000 plus interest~~
6.	First National City Bank (EduWorld)	240,000
7.	Joseph Tarr, Marjorie Keller & Robert Mullarkey	Libel claims
8.	Abraham & Co.	11,000 (approx.)
9.		
10.	Complaints and claims, not otherwise referred to herein, received prior to closing from customers, brokers, dealers and banks in connection with the carrying on of its business, none of which exceeds $5,000. The Transferee assumes such claims in the maximum aggregate amount of $35,000.	

~~** Already shown on balance sheet as contingent liability~~

* Est. benefit/detriment/claims only. Also shown in Quantitative Analysis

DEFENDANTS' EXHIBIT WWW.

DEFENDANTS' EXHIBIT XXX.

Newburger, Loeb & Co.

SOUND INVESTMENT SERVICE SINCE 1899

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OFFICES
NEW YORK
LOS ANGELES
BEVERLY HILLS

1900 AVENUE OF THE STARS • SUITE 2350 • LOS ANGELES, CALIFORNIA 90067 • (213) 277-4440

December 30, 1970

Mr. Paul Risher
Newburger, Loeb & Co.
5 Hanover Square
New York, New York

Dear Paul:

Enclosed is a copy of a letter dated August 24, 1970, in which Bob Stern wishes to distribute various warrants of the company to previous partners. Apparently, this has been voted through, and I concurred with it at the time only to find out later that the 1970 partnership has been absorbing the losses in Tyco Labs since February 26, 1970. Thus, I would like to take the position at this time that we are buying the assets and liabilities in Newburger, Loeb & Co. that should include all of these warrants. In particular, Geon Industries is worth somewhere between $50,000 and $[illegible]0,000, and Computer Software Systems could very well be worth something. Even the Tyco Labs warrants are worth $10,000.

In any case, I, as a partner in 1970, didn't like the idea that I inherited all of the liabilities and have these assets omitted, and will take a strong stand on this in the event that you can not work it out friendly.

I would suggest that you get your hands on these warrants and have them held in the vault at one of our banks.

Very truly yours,

FRED KAYNE

FK/alb
Encl.
cc: Robert Pensky

Deft's Ex 99 for ID
10/24/74

DEFENDANTS' EXHIBIT XXX.

Newburger, Loeb & Co.

SOUND INVESTMENT SERVICE SINCE 1899

2 HANOVER SQUARE, NEW YORK, N.Y. 10004 (212) 943-6300

Branch Offices

4 East 86th Street at 5th Avenue
525 Seventh Avenue at 38th Street
67 West 57th Street at 6th Avenue
1900 Ave. of the Stars, Los Angeles, Calif.
2691 Broadway at 92nd Street
951 Madison Avenue at 75th Street
920 Fidelity Ave. at Church Ave., Brooklyn
251 N. Rodeo Dr., Beverly Hills, Calif.

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Members New York Stock Exchange · American Stock Exchange · Chicago Board of Trade · New York Cotton Exchange · Commodity Exchange · New York Coffee Exchange

August 24, 1970

To:

The following securities were acquired by Newburger, Loeb & Co. after January 1, 1969 and before February 26, 1970:

555 shares Computer Production, Inc.
18,750 warrants Computer Software Systems, Inc.
4,914 warrants Crown Craft, Inc.
10,000 warrants Geon Industries, Inc.
15,625 warrants Host Enterprises, Inc.
3,600 warrants Tyco Laboratories, Inc.

The Executive Committee has determined that you therefore own an interest in these securities (which may not be readily transferable or marketable) equivalent to your share as a General Partner in the firm's profits or losses as defined in paragraph 6.3 of the Articles of Limited Partnership as of January 1, 1969.

Very truly yours,

NEWBURGER, LOEB & CO.

By: _____

jt: RLS

Defts Ex 994 for ID
10/24/74

DEFENDANTS' EXHIBIT YYY.

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DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
YYY

Loeb & Co.
MCMXXIV
N. 10005 (212) 943-0300

Member New York Stock Exchange · American Stock Exchange · Chicago Board of Trade · New York Cotton Exchange · Commodity Exchange · New York Coffee Exchange

August 31, 1970

To:

With reference to our letter dated August 24, 1970, it has been pointed out to us that the 4,914 warrants for Crown Craft, Inc. are the property of the 1968 partnership, not the 1969 partnership. Therefore, your interest in them, if any, bears no relationship to your share of the 1969 partnership profits or losses.

Please correct your records accordingly.

Very truly yours,

NEWBURGER, LOEB & CO.

By:

RLS:jt

copies to: Leo Stern
Robert L. Newburger
Andrew M. Newburger
Robert L. Stern
Charles H. Gross
George F. Conniff
Edward R. Holt
Harold J. Richards
Adolphus Roggenburg
Benjamin F. Peyser
Julius S. Schnall
John F. Thistleton
William A. McGovern
Ned D. Frank
Sanford Roggenburg
John F. Settel
Richard D. Stern

Delt'd Exh 928-for ID

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
ZZZ (ZZ)

POINT VIII

ASSUMING ARGUENDO THAT THE COURT DISMISSES THE COMPLAINT ON ANY BASIS, BLEICH AND DONOGHUE ARE ADMITTEDLY ENTITLED TO SUMMARY JUDGMENT UPON THE FIFTH AND SIXTH COUNTERCLAIMS TO THE EXTENT OF $75,000 EACH; [redacted]

We concede that if this Court should dismiss the complaint on any ground, that Bleich and Donoghue would be entitled to summary judgment against the corporation, which explicitly assumed any such liability, in the amount of $75,000 each. Their capital interest in the partnership was fixed in that amount and guaranteed by the general partners. The only basis for withholding the moneys due them by the corporation is the Buckley claim.

[redacted]

DEFENDANTS' EXHIBIT ZZZ.

E 851

The motion for summary judgment by the Gross defendants should be denied in its entirety.

Respectfully submitted,

RICHENTHAL, ABRAMS & MOSS
Attorneys for Additional Defendants on Counterclaims, Newburger, Loeb & Co., Andrew M. Newburger, Robert L. Newburger, Leo Stern, Robert L. Stern, Richard D. Stern, John F. Settle, Harold J. Richards, Sanford Roggenburg, Adolphus Roggenburg, and Ned D. Frank
122 East 42nd Street
New York, N. Y. 10016

FINLEY, KUMBLE, UNDERBERG, PERSKY, ROTH & GRUTMAN
Attorneys for Plaintiff and Additional Defendants on Counterclaims Alex Aixala, Lawrence J. Berkowitz, Fred Kayne, Robert Muh, Paul D. Risher, and Charles S. Sloane
477 Madison Avenue
New York, N. Y. 10022

HART & HUME
Attorneys for Defendants on Counterclaims, Robert S. Persky and Finley Kumble, Underberg, Persky & Roth
10 East 40th Street
New York, N. Y. 10016

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
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DEFENDANTS' EXHIBIT AAAA.

Defts' Exh. 21 Law Ti.
RC 12/22/71

E 852

ind & Co.
INCORPORATED
W YORK AND AMERICAN STOCK EXCHANGES
W YORK, N.Y. 10004 • HA 5-8787

January 19, 1971

Newburger, Loeb & Co.
5 Hanover Square
New York, N. Y. 10004

Attention: Mr. Robert L. Newburger

Gentlemen:

Mr. Charles H. Gross has applied to us for employment as a registered representative. It is our intention to hire Mr. Gross in this capacity.

We have already received clearance from his last employer, Heine & Company. Since his application indicates that he was a general partner of your firm from January 1, 1969 to September 30, 1970, we hereby request clearance from Newburger, Loeb & Co.

Your early response would be appreciated.

Very truly yours,

RAFKIND & CO.,
INCORPORATED

Karl A. Rafkind
Vice President

KAR/db

DEFENDANTS' EXHIBIT BBBB.

Defts Exh 22 for I.D.
RC 12/22/71

E 853

January 26, 1971

Mr. Carl A. Rafkind
Vice President
Rafkind & Company, Inc.
55 Broad Street
New York, New York

Dear Mr. Rafkind:

Your letter of January 19, 1971 to Robert L. Newburger has been referred to me for reply. In that letter you indicate that Mr. Charles M. Gross has applied to your firm for employment and that you intend to hire Mr. Gross as a Registered Representative. You also indicate that since Mr. Gross' application for employment indicates that he was a General Partner with Newburger, Loeb from January 1, 1969 to September 30, 1970, the clearance of this firm is being requested.

As I indicated to Mr. Levy on January 18, 1971 in our telephone conversation, Mr. Gross is a signatory to a partnership agreement of March 1, 1970 which provides in paragraph 7.1 thereof as follows:

> "Anything to the contrary in this agreement notwithstanding, a partner who shall withdraw as provided in this paragraph 7.1 may not, until the date then stated as expiration (as distinguished from sooner termination) date of the partnership in paragraph 2.1 of the then current articles of limited partnership, engage in the business of broker or dealer in securities and commodities whether for his own account or for others."

This firm has indicated to the New York Stock Exchange in the Form AD-12 filed on Mr. Gross' behalf that he is subject to the provisions outlined above.

Sincerely yours,

Lawrence J. Berkowitz
General Counsel

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

BBBB

DEFENDANTS' EXHIBIT CCCC.

Defts' Exh 23 for ID
RC 12/22/71

Rafkind & Co.
INCORPORATED
MEMBERS NEW YORK AND AMERICAN STOCK EXCHANGES
55 BROAD STREET • NEW YORK, N.Y. 10004 • HA 5-8787

E 854

January 29, 1971

Newburger, Loeb & Co.
5 Hanover Square
New York, N. Y. 10004

Attention: Lawrence J. Berkowitz,
General Counsel

Gentlemen:

In view of the objections raised by your letter of January 26, 1971, we have decided not to employ Mr. Charles H. Gross.

Sincerely,

Karl A. Rafkind

KAR/dbk

DEFENDANT'S
EXHIBIT
U. S DIST. COURT
S. D. OF N. Y.
CCCC

DEFENDANDANTS' EXHIBIT DDDD. EX RY 4-7-71
EC 12/22/71

E 855

February 1, 1971

Mr. Carl A. Rafkind
Vice President
Rafkind & Company, Inc.
55 Broad Street
New York, New York

Re: Charles H. Gross

Dear Mr. Rafkind:

I have your letter of January 29th in which you indicate that "in view of the objections" raised in my letter of January 26th your firm has decided not to employ Mr. Gross.

You should be aware that my letter of January 26th did not state any "objections" but was merely a factual recitation of the contents of a document signed by Mr. Gross.

Any questions concerning the enforceability of that agreement and whether or not your firm wishes to enter into an employment arrangement with Mr. Gross are questions solely for your decision.

Sincerely yours,

Lawrence J. Berkowitz

LJB:cvh

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

DDDD

DEFENDANTS' EXHIBIT FFFF.

E 856

August 31, 1970

Newburger, Loeb & Co.
5 Hanover Square
New York, N.Y. 10004

Gentlemen:

Pursuant to the provisions of Paragraph 7.1(a) of Article VII of the Restated Articles of Limited Partnership of Newburger, Loeb & Co., as amended, dated as of the 26th day of February, 1970, I hereby notify you of my withdrawal as a General Partner from the Partnership of Newburger, Loeb & Co., effective as of the close of business on September 30, 1970.

Very truly yours,

Charles H. Gross

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
FFFF

DEFENDANTS' EXHIBIT FFFF.

CHARLES H. GROSS

NEWBURGER, LOEB & CO.
5 HANOVER SQUARE
NEW YORK, N.Y. 10004

E 857

August 31, 1970

New York Stock Exchange
11 Wall Street
New York, N.Y.

Re: Newburger, Loeb & Co.

Gentlemen:

I am writing to advise you that the undersigned, Charles H. Gross, will withdraw as a General Partner of the Partnership, Newburger, Loeb & Co., as of the close of business on September 30, 1970 and has given notice to that effect to Newburger, Loeb & Co.

Very truly yours,

Charles H. Gross

Charles H. Gross

Receipt acknowledged
August 31, 1970

By _____

DEFENDANTS' EXHIBIT FFFF.

CHARLES H. GROSS

NEWBURGER, LOEB & CO.
5 HANOVER SQUARE
NEW YORK, N.Y. 10004

E 858

August 31, 1970

American Stock Exchange
86 Trinity Place
New York, N.Y. 10006

Re: Newburger, Loeb & Co.

Gentlemen:

I am writing to advise you that the undersigned, Charles H. Gross, will withdraw as a General Partner of the Partnership, Newburger, Loeb & Co., as of the close of business on September 30, 1970 and has given notice to that effect to Newburger, Loeb & Co.

Very truly yours,

Charles H. Gross

Charles H. Gross

Receipt acknowledged
August 31, 1970

By _____

DEFENDANTS' EXHIBIT GGGG.

E 859

September 29, 1970

Executive Committee
Newburger, Loeb & Co.
5 Hanover Square
New York, N. Y. 10004

Gentlemen:

I refer to the Restated Articles of Limited Partnership of Newburger, Loeb & Co., as Amended, dated as of February 26, 1970. Pursuant to such Restated Articles of Limited Partnership, as Amended, this will constitute notice that I do hereby withdraw all of my additional capital and require that payment of the full amount of my additional capital be made to me forthwith.

Very truly yours,

Charles H. Gross

DEFENDANTS' EXHIBIT HHHH.

CHARLES H. GROSS
32 The Intervale
Roslyn Estates, New York

E 860.

October 28, 1970

Newburger, Loeb & Co.
5 Hanover Square
New York, N. Y. 10004

Gentlemen:

In accordance with Paragraph 8.3 of Article VIII of the Restated Articles of Limited Partnership of Newburger, Loeb & Co., as amended, demand is hereby made for the payment of 15% of the amount of committed capital standing in my name on the books of the partnership at the effective date of my withdrawal as a general partner of the partnership.

You are reminded of the notice heretofore given by me to you of my demand for withdrawal of all of the additional capital standing in my name on the books of the partnership.

Very truly yours,

Charles H. Gross

DEFENDANT'S EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

HHHH (Sd)

Received by
Fred Kayne Partner
Newburger Loeb & Co
10/28/70

DEFENDANTS' EXHIBIT IIII.

CHARLES H. GROSS
32 The Intervale
Roslyn Estates, New York

E

861

October 28, 1970

Newburger, Loeb & Co.
5 Hanover Square
New York, N. Y. 10004

Gentlemen:

Interest on capital standing in my name remains unpaid from July 1, 1970. Demand is hereby made for the payment to me by Newburger, Loeb & Co. of all such accrued and unpaid interest.

Very truly yours,

Charles H. Gross

Received by
Fred Kayne, Partner
for Newburger Loeb & Co
10/28/70

DEFENDANT'S
EXHIBIT
U.S. DIST. COURT
S.D.N.Y.
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DEFENDANTS' EXHIBIT JJJJ.

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862

AGENDA - EXECUTIVE COMMITTEE MEETING AUGUST 11, 1970

NOTE: Executive Committee will meet at 4:00 p. m.

1. Reading of last meeting's minutes.

2. Old business --

   a. N. B. A. - Fred Kayne
   b. Real Estate - Fred Kayne
   c. Insurance - Charles Gross

3. New business --

   a. Report by Fred Kayne --
      1. Major changes already affectuated
      2. Major changes contemplated
   b. Notice of fine to capital contributors
   c. Assignment of vested interest in "paper" accumulated since 1/1/69

August 11, 1970
RLN/mb

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

JJJJ (2d.)

GER, LOEB & Co. DEFENDANTS' EXHIBIT JJJJ.

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MINUTES

Executive Committee Meeting, Tuesday, August 11, 1970, 4:00 p.m.

Present: Robert L. Newburger
Leo Stern
Andrew M. Newburger
Robert L. Stern
Charles H. Gross
Fred Kayne
Robert F. Therese
Ned D. Frank

Absent: John F. Settel

The Minutes of the prior meeting were read and accepted with the following correction -- Andrew M. Newburger is alternate specifically for Robert L. Newburger, Charles S. Sloane is alternate specifically for Fred Kayne, and Leo Stern is alternate specifically for Robert L. Stern.

OLD BUSINESS

1. Fred Kayne spoke about the N. B. A. situation. He has asked Jim Settel to devote himself almost exclusively to this project. We are moving full speed ahead towards an intra-state underwriting for approximately 40%. It appears that we may well be co-underwriters with S. D. Lunt & Co. in Buffalo and Bonbright & Co. in Rochester. We will more than likely act as managing underwriter. Concurrent with the underwriting project, we will seek to find a buyer or buyers, investor or investors for the remaining 60% of the franchise.

2. Real Estate: Fred Kayne mentioned that a study has been made on our Real Estate commitments to facilitate our strategy for disposal. We are about to close rental of the 74th Street office momentarily. Our big thrust in Real Estate is to remove our commitment for One New York Plaza. A conference was held with Golenbock & Barell in order to assess our position. Said conference was apparently most unsatisfactory. It was decided that we should research the possibility of retaining the services of a specialized Real Estate counsel in this matter.

3. Insurance: Charles Gross reported that his visit to the Great American Insurance Company to negotiate a Broker's Blanket Bond was unsuccessful.

NEW BUSINESS

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1. Assignment of vested interest in "paper" accumulated since 1/1/69: It was decided that interest in "paper" is the property of each general partner in relationship to his interest in the profits and losses of the firm at the time the "paper" was earned not at the time it will be disposed of.

2. Notice of fine to capital contributors: The New York Stock Exchange requires that a copy of its censure of Newburger, Loeb & Co. be placed in the hands of all capital contributors. Charles Gross and Robert Newburger were given the responsibility to implement.

3. Major changes already effectuated: Fred Kayne discussed certain positions of responsibility as set forth in attached Exhibit A.

4. Fred Kayne spoke on various matters --

   a. He discussed various management tools that are being brought to bear.

   b. He pointed out that Ned Frank, as Partner of Compliance, is to take over the Tepper matter and the handling of unsecured debits.

   c. He mentioned that a substantial producer of Mutual Fund business has been secured for 250 Park Avenue. This particular Account Executive sold $9-million worth of mutual funds in 1969 -- $2-million so far this year.

   d. He reported that the raw figures for July show a loss of $110,000-$130,000. This results from dramatically falling revenues. Fred spoke in general about our future cash requirements. Our program must be to improve revenues and to continue cost production. We are attempting to renegotiate our agreement with ACS.

5. Charles Gross resigned the position of "Managing Partner".

6. Fred Kayne was appointed Managing Partner.

Meeting adjourned.

August 12, 1970
RLN/mb

DEFENDANTS' EXHIBIT JJJJ.

NEW POSITIONS OF RESPONSIBILITY THAT HAVE BEEN DONE

E. 865

1. Ned Frank - Partner of Compliance
2. Jim Settel- Partner - Charge of Basketball
3. Bob Therese - Partner in Charge of Operations
4. Ed Rubin - Reports to Operations Partner
5. Bob Stern - Reports to Operations Partner
6. Robert Newburger - Becoming NYSE Floor Partner
7. Andy Newburger - Becomes Resident Partner - 24th Floor
8. Harold Richards - Becomes Resident Partner - 250 Park Avenue

Executive offices have been moved for greater efficiency.

DEFENDANTS' EXHIBIT KKKK.

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Schedule of Prices of Geon Stock by Month

Year and Month	High	Low
1971		
January	17-1/2	15
February	18-1/4	17-1/4
March	24	17-1/2
April	24-1/2	22
May	24-1/2	22
June	27-5/8	22
July	31-1/2	26-1/2
August	37-3/4	22-5/8
September	32-7/8	27-1/8
October	33-7/8	26-1/4
November	28-3/8	25-1/2
December	36-5/8	28-1/4
1972		
January	38-1/2	31-1/2
February	38-1/2	36-3/8
March	42-1/4	36-3/8
April	39-1/2	36
*May	25-3/4	25-3/4
June	26	21-1/2
July	23	20-3/8
August	25	22-1/2
September	24	23-3/8
October	24-5/8	24-5/8
November	25	22-5/8
December	24-1/2	22-1/2
1973		
January	23	18-1/4
February	19-5/8	13-5/8
March	15-7/8	12-1/8
April	14-3/4	11-3/4
May	12-1/2	7-3/4
June	9	7-5/8
July	10-3/4	10-1/8
August	11	10-5/8
September	13-7/8	12-7/8
October	14-3/4	13-1/8
November	13-3/8	10-5/8
December	14-1/8	13-3/8

* After 3 for 2 stock split.

sale price 42.25
spread " 6.875
35.375
per share profit
x no. shares 1650
$ 58,368.75

DEFENDANT'S EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
KKKK

DEFENDANTS' EXHIBIT LLLL.

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Schedule of Prices of National CSS Stock by Month

Year and Month	High	Low
1971		
January	8-1/4	6-1/4
February	9	8
March	11-1/2	8-3/4
April	13-1/2	11
May	13-1/2	11
June	12-3/4	8-1/2
July	9-1/2	8
August	8-1/4	8
September	8-1/2	8-1/4
October	8-1/2	7
November	8	6-1/4
December	8-1/4	6-1/4
1972		
January	11-1/2	8-1/4
February	12	11
March	12-1/2	11-3/4
April	16-3/4	12
May	21	14-1/2
June	25-1/4	19-1/2
July	22-1/2	18-3/4
August	27-3/4	22-3/4
September	27	23-1/4
October	28-1/2	25-1/2
November	30-5/8	28-7/8
December	29-5/8	27-5/8
1973		
January	36	33
February	36-3/8	34
March	41-1/2	31
April	30	25-1/4
May	27-1/2	18
June	24-1/2	24-1/2
July	28-1/2	23-1/2
August	25-1/2	24-1/2
September	28-1/2	28
October	33	31-1/2
November	32	24-1/2
December	33	33

mkt. price 41.50
exercise price 17.00
profit per share 24.50
x no. shares 3094
$ 75,803.00

DEFENDANTS'
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

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DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. [illegible]

DEFENDANTS' EXHIBIT MMMM.

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MMMM (id)

Calculation of Profits on
Charles H. Gross Trading

Year	Firm	Average Capital	Profit	% Return
1964	Gross & Co.	335(a)	475	142
1965	Gross & Co.	539(a)	343	64
1966	Gross & Co.	532(a)	228(b)	43
1967	Gross & Co.	510(a)	287(b)	56
1968	Gross & Co.	268(a)	359(b)	134
1972 (4 months)	Cohen, Simonson, Rea & Co.	150(c)	24(d)	48
1973	Cohen, Simonson, & Co. (9 mos.); Bruns, Nordeman, Rea & Co. (3 mos.)	150(c)	144(d)	96
1974	Bruns, Nordeman, Rea & Co.	175(c)	216(d)	123
1975 (3 months)	Bruns, Nordeman, Rea & Co.	250(c)	113(d)	180
			Avg. Profit	98.44%

Notes:

(a) Average Capital computed by averaging the starting and ending capital for each year and subtracting from that average the New York Stock Exchange minimum capital requirement of $50,000 and, in 1966, 1967 and 1968, one-half the cost of the firm's membership in the American Stock Exchange. Then, one-half the cost of Charles H. Gross' New York Stock Exchange Membership (which was not an asset of the firm) was added to the remainder.

(b) A profit of $445,000 was realized in the first week of 1969 -- after Gross & Company had ceased doing business -- by the pairing off of long and short positions that existed at the close of business on 12/31/68 and his profit was applied equally to the years 1966, 1967 and 1968.

DEFENDANTS' EXHIBIT MMMM.

Calculation of Profits on
Charles H. Gross Trading - Page 2

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Notes (Cont'd.):

(c) Capital was computed by dividing the allowable buying power by two. Margin requirements were 50% throughout the period.

(d) Profit is net of all expenses chargeable to trading activities, such as clearance charges, floor brokerage, interest, private line charges, data retrieval charges, stock market advisory services, charts, etc.

E870

Payments to Partners Salaries & Interest (Line 1, Page 1)	Qualifying Dividends	Net Short Term Gain (Loss) Line 9 Sch.D)	Net Long Term Gain (Loss) (Line 13, Sch.D)	Net Gain (Loss) under Sec.1231 (Line 6 Sch.D)	Net Earnings from self-Employment (Line 10 Sch.N)
	428	(20)	473765	(1900)	(49974)
825	63	(3)	69893	(146)	(6399)
575	31	(2)	34946	(73)	4700
1800	31	(1)	34946	(73)	(1782)
521	31	(1)	34946	(73)	(3061)
335	16	(1)	17473	(37)	(1556)
—	25	(1)	27957	(59)	(2545)
11663	675	(29)	695926	(1461)	(59975)

Income not Included in Col. 3, Plus non-taxable Income	Losses not included in Col. 3, Plus unallowable Deductions	Withdrawals and Distributions	Capital a/c at End of Year
479123	1020	664700	—
69956	149	8132	—
34977	75	9572	—
34977	74	32469	—
34977	74	9021	—
17489	36	2110	—
27957	60	12187	—
699551	1490	737002	NONE

FOR N. Y. STATE

Partners' share of changes from Federal items

ADDITIONS

N.Y. State and N. Y. City Unincorporated Business Tax. $

DEFENDANTS' EXHIBIT VVVV.

EXHIBIT A

871

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NEWBURGER, LOEB & CO.

COMPUTATION OF CHARLES GROSS' CAPITAL ACCOU

DEFENDANTS
EXHIBIT
U. S. DIST. COURT
S. DIST.
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Charles Gross' capital account:			
Balance at January 2, 1970, plus any contributions made by him since then, plus interest or compensation for the use of capital to September 30, 1970 (the effective date), and salary due, minus all withdrawals and payments of interest from January 2, 1970 to September 30, 1970 (the effective date), BUT before subtraction of his share of losses from January 2, 1970 to September 30, 1970.			$897,603
Less:	Share of 1968-1969 "Back Office Losses", schedule A-1	$(235,518)	
	Share of unrealized losses on exchange memberships - schedule A-1	(103,528)	
	Share of 1970 operating losses (14.21892%) schedule A-1	(220,636	
	Total of Gross' share of losses for 1970		(559,682)
Charles Gross' capital account, September 30, 1970 (Note 1)			$337,921
Charles Gross' capital account, December 31, 1970 (Note 1)			$337,921 *
Charles Gross' capital account, February 11, 1971 (Note 1)			$337,921 *

(*) plus accrued interest

Note 1. Without regard to the following securities, owned by Mr. Gross and held by Newburger, Loeb & Co. for him:

a) 3094 Warrants, Computer Softwear Systems, Inc.

b) 1650 Warrants, Geon Industries, Inc.

c) 2578 Warrants, Host Enterprises, Inc.

DEFENDANTS' EXHIBIT VVVV.

SCHEDULE A-1

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NEWBURGER, LOEB & CO.

DISTRIBUTIVE SHARE OF CHARGES

CHARLES H. GROSS, CAPITAL ACCOUNT

1970

Source: Schedule 1 of Newburger, Loeb & Co. Statement of Financial Condition, December 31, 1970 accompanying report of Peat, Marwick, Mitchell & Co., Certified Public Accountants, dated March 25, 1971.
For item 3 below, see also Exhibit C.

Distributive Share Of:	Amount
1968-1969 " Back Office " losses	$235,518
Unrealized losses on exchange memberships	$103,528
1970 operating losses	$220,636

DEFENDANTS' EXHIBIT VVVV.

EXHIBIT C

NEWBURGER, LOEB & CO.

COMPUTATION OF 1970 OPERATING LOSS AS ADJUSTED TO DETERMINE CHARLES GROSS' SHARE THEREIN
(See Schedule C-1 attached)

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Loss as reported		$(3,017,078)
Adjustments:		
1. Atlas Realty settlement	$411,655	
2. Write-off of unsecured accounts	152,798	
3. James Anthony account written-off	11,149	
4. Write-off of N. L. Sports receivable	52,124	
5. Write-off of dividends receivable, 90 days old	34,463	
6. Year end incentive bonuses	38,220	
7. Interest to W. E. Hutton	20,000	
8. Reserved for guaranteed notes contingencies	11,661	
9. Reserved for N. L. Sports	47,876	
10. Reserved for short market value of dividends receivable	60,000	
11. Reserved for unsecured accounts	40,000	
12. Write-off of prepaid conversion costs	37,047	
13. Accrual of December 31, 1970 audit fee	15,000	
14. Reversal of partners' interest account	39,320	
15. New York State and New York City carryback refund claims	494,156	
Total adjustments		1,465,369
Loss as adjusted		$(1,551,709)
Chas. Gross' share (14.21892%)		$(220,636)

DEFENDANTS' EXHIBIT VVVV.

SCHEDULE C-1

NEWBURGER, LOEB & CO.

ADJUSTMENTS TO REPORTED 1970 OPERATING LOSS

FOR ADJUSTMENT OF CHARLES H. GROSS' SHARE

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Item 1 - Atlas Realty settlement $411,655

The company - Newburger, Loeb & Co., in its unaudited monthly statements (Source - Peat, Marwick, Mitchell & Co. workpapers, Binder 12, W.P. Z 8 G) indicated that the above settlement was " extraordinary " and incurred in November 1970.

Item 2 - Write-off of unsecured accounts $152,798

The company - Newburger, Loeb & Co., in its unaudited monthly statements (Source - Peat, Marwick, Mitchell & Co. workpapers, Binder 12, W.P. Z 8 G) indicated that the above settlement was " extraordinary " and incurred in November 1970.

Item 3 - James Anthony account written-off $ 11,149

The company - Newburger, Loeb & Co., in its unaudited monthly statements (Source - Peat, Marwick, Mitchell & Co. workpapers, Binder 12, W.P. Z 8 G) indicated that the above settlement was " extraordinary " and incurred in November 1970.

Item 4 - Write-off of N. L. Sports receivable $ 52,124

The company - Newburger, Loeb & Co., in its unaudited monthly statements (Source - Peat, Marwick, Mitchell & Co. workpapers, Binder 12, W.P. Z 8 G) indicated that the above settlement was " extraordinary " and incurred in November 1970.

Item 5 - Write-off of dividends receivable, 90 days old $ 34,463

The company - Newburger, Loeb & Co., in its unaudited monthly statements (Source - Peat, Marwick, Mitchell & Co. workpapers, Binder 12, W.P. Z 8 G) indicated that the above settlement was " extraordinary " and incurred in December 1970.

Item 6 - Year end incentive bonuses $ 38,220

The company - Newburger, Loeb & Co., in its unaudited monthly statements (Source - Peat, Marwick, Mitchell & Co. workpapers, Binder 12, W.P. Z 8 G) indicated that the above settlement was " extraordinary " and incurred in December 1970.

DEFENDANTS' EXHIBIT VVVV.

SCHEDULE C-1

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Item 7 - Interest to W. E. Hutton — $ 20,000

There were no adequate vouchers or basis available to document this estimate in Peat, Marwick, Mitchell & Co. workpapers. A test made by the auditors indicated a lesser amount to be payable.

Item 8 - Reserved for guaranteed notes contingencies. — $ 11,661

There was no adequate documentation available to support the conclusion that employees such as Richard Jacobs were not in fact making the primary required payments to the lender.

Item 9 - Reserved for N. L. Sports — $ 47,876

The company - Newburger, Loeb & Co., in its unaudited monthly statements (Source - Peat, Marwick, Mitchell & Co. workpapers, Binder 12, W.P. Z 8 G) indicated that the above settlement was " extraordinary " and incurred in November 1970.

Item 10 - Reserved for short market value of dividends receivable — $ 60,000

There was no adequate documentation available to support this reserve as necessary.

Item 11 - Reserved for unsecured accounts — $ 40,000

There was no adequate documentation available to support this reserve as necessary.

Item 12 - Write-off of prepaid conversion costs. — $ 37,047

There was no adequate documentation available to support this write-off, which was made in excess of the company's normal amortization procedure.

Item 13 - Accrual of December 31, 1970 audit fee — $ 15,000

This provision was inconsistent with prior practice wherein the audit fee was accrued as the related expense was incurred - the liability did not exist until the services were performed - subsequent to December 31, 1970. The similar cost for the 1969 audit was charged to 1970 - when the services were rendered.

SCHEDULE C-1

E 876

Item 14 - Reversal of partners' interest account $ 39,320

Interest on partners' capital accounts had been charged and credited regularly during the year. At year end, December 31, 1970, the net amount due from partners (for interest charged to them) was forgiven without adequate documentation or explanation.

Item 15 - New York State and New York City carryback refund claims $494,156

The amount stated was calculated in Peat, Marwick, Mitchell & Co. workpapers Binder 7, W.P. L-5-3 as the estimated amount of recoverable taxes as follows:

New York State	$264,395
New York City	229,761
	$494,156

No asset value was ascribed to this recovery in the financial statement at December 31, 1970 and was deemed worthy of specific note in the notes to the financial statements which accompanied the auditor's report dated March 25, 1971.

Charles H. Gross' share of loss as adjusted is that percentage used in the financial statements: 14.21892%.

DEFENDANTS' EXHIBIT WWWW.

File of Documents covering 1972 sale
by Kayne et al to Risher et al.

DEFENDANTS' EXHIBIT WWWW.

E 877

FROM

FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH
477 MADISON AVENUE
NEW YORK, N. Y. 10022

I

SALE OF 260,000 SHARES OF THE VOTING STOCK OF NEWBURGER, LOEB & CO., INC., BY KAYNE, BERKOWITZ AND SLOANE TO RISHER, WILBUR AND CRAWFORD PURSUANT TO A MEMORANDUM OF AGREEMENT DATED FEBRUARY 1, 1972

II

SALE OF 200,000 SHARES BY MUH TO RISHER, WILBUR AND CRAWFORD PURSUANT TO AN AGREEMENT DATED FEBRUARY 11, 1972

CLOSING STATEMENT

E 878

I

SALE OF 260,000 SHARES OF THE VOTING STOCK ("SHARES") OF NEWBURGER, LOEB & CO., INC. (THE "CORPORATION") BY FRED KAYNE, LAWRENCE J. BERKOWITZ AND CHARLES S. SLOANE ("SELLERS") TO PAUL D. RISHER, E. PACKER WILBUR AND SAMUEL CRAWFORD ("BUYERS") PURSUANT TO A MEMORANDUM OF AGREEMENT DATED FEBRUARY 1, 1972

II

SALE OF 200,000 SHARES BY ROBERT MUH TO BUYERS PURSUANT TO AN AGREEMENT DATED FEBRUARY 11, 1972

Summary

Pursuant to a Memorandum of Agreement dated February 1, 1972 ("California Agreement"), Sellers sold an aggregate of 260,000 Shares of the Corporation to Buyers at a price of Two ($2.00) Dollars per share, or an aggregate of Five Hundred and Twenty Thousand ($520,000.00) Dollars. The California Agreement provided payment of Four Hundred Thousand ($400,000.00) Dollars cash to Fred Kayne ("Kayne"); Fifty-Five Thousand ($55,000.00) Dollars in cash to Lawrence J. Berkowitz ("Berkowitz"), together with a Fifteen Thousand ($15,000.00) Dollar note, dated February 1, 1972, and due on April 1, 1972; and Forty-Five Thousand ($45,000.00) Dollars cash to Charles S. Sloane ("Sloane"), together with a promissory note in the sum of Five Thousand ($5,000.00),

dated February 1, 1972, and due and payable on April 1, 1972. The California Agreement also gave Jed Cohen ("Cohen") an option to sell and Buyers an option to buy an additional 30,000 Shares of the Corporation owned by Cohen at Two ($2.00) Dollars per share, between June 21, 1972, and July 15, 1972, inclusive.

Kayne, Robert Muh ("Muh") and Berkowitz agreed to resign upon the consummation of the transaction as officers, directors and Executive Committee Members of the Corporation and each of its subsidiaries.

In order to provide for agreement on the terms of the purchase of the Corporation's Shares owned by Muh, the notes, the checks representing the cash portion of the purchase price, and the Shares owned by Kayne, Berkowitz and Sloane were placed in escrow with Robert S. Persky as Escrow Agent.

On February 11, 1972, the Escrow Agent received (i) instructions from Paul D. Risher ("Risher") to deposit the checks and (ii) joint instructions from Risher and Muh notifying him, in accordance with the provisions of the Escrow Agreement, that they had reached a satisfactory agreement relating to the sale of the Shares owned by Muh, Risher, E. Packer Wilbur ("Wilbur") and Samuel Crawford ("Crawford").

The following documents were executed and exchanged on February 1, 1972:

1. Memorandum of Agreement, dated February 1, 1972, among Paul D. Risher, Samuel Crawford and E. Packer Wilbur ("Buyers") and Fred Kayne, Robert Muh, Lawrence J. Berkowitz, Charles S. Sloane and Jed Cohen ("Sellers");

2. Escrow Agreement, dated February 1, 1972, between Robert S. Persky, as Escrow Agent and Fred Kayne, Charles S. Sloane, Lawrence J. Berkowitz, Paul D. Risher, Samuel Crawford and E. Packer Wilbur;

3. The following documents were delivered to the Escrow Agent:

   (i) certificate number VC3 of the Corporation, representing 200,000 Shares of voting stock registered in the name of Fred Kayne;

   (ii) certificate numbers VC15 and 16, representing 35,000 Shares of the common stock of the Corporation registered in the name of Lawrence J. Berkowitz;

(iii) certificate numbers VC18 and 19, representing 25,000 Shares of the common stock of the Corporation, registered in the name of Charles S. Sloane;

(iv) resignations of Messrs. Kayne, Berkowitz and Sloane as officers, directors and members of the Executive Committee of the Corporation and each of its subsidiaries;

(v) check of Risher in the sum of One Hundred and Sixty-Six Thousand One Hundred and Sixty-Six Dollars ($166,166.67) and Sixty-Seven Cents payable to Robert S. Persky as Escrow Agent and drawn on the Morgan Guaranty Trust Company of New York;

(vi) check of Wilbur in the sum of One Hundred and Sixty-Six Thousand One Hundred and Sixty-Six Dollars ($166,166.66) and Sixty-Six Cents payable to Robert S. Persky, Esq., on the Irving Trust Company;

(vii) check of Crawford in the sum of One Hundred and Sixty-Six Thousand One Hundred and Sixty-Six

Dollars ($166,166.67) and Sixty-Seven Cents payable to Robert S. Persky, as Escrow Agent drawn on the First National City Bank of New York;

(viii) general releases running from Sellers to Buyers;

(ix) general releases in favor of Sellers from Buyers;

(x) promissory note in the sum of Fifteen Thousand ($15,000.00) Dollars, dated February 1, 1972, payable to Berkowitz and executed by Buyers;

(xi) promissory note in the sum of Five Thousand ($5,000.00) Dollars, dated February 1, 1972, payable to Sloane and executed by Buyers;

(xii) irrevocable proxy executed by Berkowitz in favor of Risher for the Shares represented by the Corporation's stock certificate number VC16;

(xiii) irrevocable proxy executed by Sloane in favor of Paul Risher relating to 2,500 Shares of the Corporation's stock represented by certificate number VC19.

Several documents were also executed memorializing oral agreements previously reached, which had not been reduced to writing. These agreements related to the fees to be paid to Alan Silverstone and Fred Kayne relating to the underwriting of Barry's Jeweler's, Inc., and a second agreement relating to the compensation to be paid to Fred Kayne and Alan Fox in connection with the underwriting of Parking Structures International. An additional document relating to the waiver of the right of first refusal by the Corporation for future offerings of the shares of Creative Fabrics Corporation was also executed.

Copies of the following documents are enclosed herewith:

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1. Memorandum of Agreement, dated February 1, 1972, among Paul D. Risher, Samuel Crawford and E. Packer Wilbur ("Buyers") and Fred Kayne, Robert Muh, Lawrence J. Berkowitz, Charles S. Sloane and Jed Cohen ("Sellers");
2. Escrow Agreement, dated February 1, 1972, between Robert S. Persky, as Escrow Agent and Fred Kayne, Charles S. Sloane, Lawrence J. Berkowitz, Paul D. Risher, Samuel Crawford and E. Packer Wilbur;
3. Certificate number VC3 of the Corporation, representing 200,000 shares of the voting stock registered in the name of Fred Kayne;
4. Certificate numbers VC15 and 16, representing 35,000 shares of the common stock of the Corporation registered in the name of Lawrence J. Berkowitz;
5. Certificate numbers VC18 and 19, representing 25,000 shares of the common stock of the Corporation, registered in the name of Charles S. Sloane;

6. Resignations of Messrs. Kayne, Berkowitz and Muh as officers, directors and members of the Executive Committee of the Corporation and each of its subsidiaries;

7. Check of Risher in the sum of One Hundred and Sixty-Six Thousand One Hundred and Sixty-Six Dollars ($166,166.67) and Sixty-Seven Cents payable to Robert S. Persky as Escrow Agent and drawn on the Morgan Guaranty Trust Company of New York;

8. Check of Wilbur in the sum of One Hundred and Sixty-Six Thousand One Hundred and Sixty-Six Dollars ($166,166.66) and Sixty-Six Cents payable to Robert S. Persky, as Escrow Agent , on the Irving Trust Company;

9. Check of Crawford in the sum of One Hundred and Sixty-Six Thousand One Hundred and Sixty-Six Dollars ($166,166.67) and Sixty-Seven Cents payable to Robert S. Persky, as Escrow Agent drawn on the First National City Bank of New York;

10. General releases running from Sellers to Buyers;

11. General releases in favor of Sellers from Buyers;

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12. Promissory note in the sum of Fifteen Thousand ($15,000.00) Dollars, dated February 1, 1972, payable to Berkowitz and executed by Buyers;

13. Promissory note in the sum of Five Thousand ($5,000.00) Dollars, dated February 1, 1972, payable to Sloane and executed by Buyers;

14. Irrevocable proxy executed by Berkowitz in favor of Risher for the shares represented by the Corporation's stock certificate number VC16;

15. Irrevocable proxy executed by Sloane in favor of Risher relating to 2,500 shares of the Corporation's stock represented by certificate number VC19.

16. Instructions from Risher and Muh dated February 11, 1972, to the Escrow Agent.

Collateral documents included herein:

17. Memorandum Agreement dated February 2, 1972, relating to underwriting for Barry's Jewelers, Inc.;

18. Memorandum Agreement relating to waiver right of first refusal with respect to Creative Fabrics Corporation;

19. Memorandum Agreement regarding employment of Charles S. Sloane.

On February 11, 1972, Robert Muh reached an agreement relating to the sale of his 200,000 shares of voting common stock of the Corporation to Messrs. Risher, Crawford and Wilbur. This agreement was evidenced by an agreement dated February 11, 1972, between the parties and a supplemental agreement dated February 11, 1972, among Messrs. Risher, Crawford, Wilbur, Muh and the Corporation.

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At approximately 10:00 p.m., on the evening of February 11, 1972, at the offices of Finley, Kumble, Underberg, Persky, Roth & Grutman, instructions to the Escrow Agent pursuant to the Escrow Agreement dated February 1, 1972, were duly delivered to Robert S. Persky, as Escrow Agent.

Persons present at the closing at the offices of Newburger, Loeb & Co., Inc., 1900 Avenue of the Stars, Los Angeles, California, on February 1, 1972:

Stanley J. Friedman, Esq., of the firm of Shereff, Friedman, Hoffman & Goodman, 919 Third Avenue, New York, New York 10022, representing the Buyers;

Alan I. Rothenberg, Esq., of the firm of Manatt, Phelps & Rothenberg, 1800 Century Park East, Los Angeles, California 90067, representing Fred Kayne;

Robert S. Persky, Esq., of the firm of Finley, Kumble, Underberg, Persky, Roth & Grutman, 477 Madison Avenue, New York, New York 10022, representing the Corporation;

Paul D. Risher, Buyer;

E. Packer Wilbur, IV, Buyer;

Samuel Crawford, Buyer;

Fred Kayne, Seller;

Lawrence J. Berkowitz, Esq., Seller, and counsel representing himself;

Charles S. Sloane, Seller;

Robert Muh, prospective Seller.

Persons present at the closing held on February 11, E

1972, at the offices of Finley, Kumble, Underberg, 890

Persky, Roth & Grutman:

Stanley J. Friedman, Esq., of the firm of Shereff, Friedman, Hoffman & Goodman, 919 Third Avenue, New York, New York 10022, representing Buyers;

George Barnett, Esq., of the firm of Schaeffer, Dale, Vogel & Tavrow, 1501 Broadway, New York, New York, representing Robert Muh;

Robert S. Persky, Esq., of the firm of Finley, Kumble, Underbert, Persky, Roth & Grutman, 477 Madison Avenue, New York, New York 10022, representing the Corporation;

Paul D. Risher, Buyer;

E. Packer Wilbur, IV, Buyer;

Samuel Crawford, Buyer;

Robert Muh, Seller

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DEFENDANTS' EXHIBIT XXXX.

E 891

FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH

LEON FINLEY
STEVEN J. KUMBLE
NEIL UNDERBERG
ROBERT S. PERSKY
HERBERT F. ROTH
DONALD ZIMMERMAN
MICHAEL A. BAMBERGER

NORMAN ROY GRUTMAN
THEODORE J. GREENE
ALAN M. GELB
B. HOWARD RAPPAPORT
RICHARD E. CARTER
LEWIS H. SANDLER

PAUL R. ALTER
STANLEY L. GOLDEN
BENJAMIN IRA GERTZ
JOHN P. A. MARCIN
DONALD S. SNIDER
HOWARD L. BASS
ROBERT E. PEDUZZI
STEPHEN A. WEISS
JAMES C. MULLINS

L. MARTIN GIBBS
ROBERT L. FALKER
LENORE D. KALMUS
SHELDON M. GOLDSTEIN
WILLIAM F. ROSENBLUM, JR.
PETER J. LANE
STEPHEN G. DICKERMAN
HOWARD A. ROSENSTEIN

LOUIS BECK
COUNSEL

477 MADISON AVENUE
NEW YORK, NEW YORK 10022

371-5900
(AREA CODE 212)

CABLE: LENFINLEY
NEW YORK

June 2, 1971

Mr. Philip Mandel
Golden, Wienshienk & Mandel
10 East 40th Street
New York, New York 10016

Re: Newburger, Loeb & Co., Inc., etc.
v. Charles Gross, et al.
Our file no. 1629.112

Dear Mr. Mandel:

We enclose herewith a copy of the proposed form of Amended Complaint in the captioned action. We would appreciate your reviewing the same and advising us no later than Friday, June 4, 1971, whether you are prepared to stipulate the service thereof, failing which we shall be compelled to move for an Order granting us the right to make service of this pleading.

It is my understanding that you are prepared to execute the Amended Stipulation granting the adjournments of times to answer and reply, and otherwise adjourning deposition schedules which were the subject of a telephone conversation between our respective secretaries yesterday. Accordingly, and in the interests of our mutual ability to amicably conduct this litigation on a proper, professional basis, I will not otherwise reply to your letter of May 28.

I look forward to meeting you tomorrow at the deposition of Mr. Persky.

Very truly yours,

FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH

By: Alan M. Gelb
Alan M. Gelb

AMG/js
Enclosure

-DEFENDANTS EXHIBIT XXXX.

E 892

July 19, 1971

Alan M. Gelb, Esq.
Finley, Kumble, Underberg,
Persky & Roth, Esqs.,
477 Madison Avenue
New York, N.Y. 10022

Dear Mr. Gelb:

Re: Newburger, Loeb & Co. Inc., v. Charles Gross, et al

I have tried to reach you several times on the telephone but apparently you have been out of town.

It is now about 40 days since we spoke to each other after our deposition session with Mr. Buckley. At that time you told me you wished further time to respond to the answer and counterclaims and that you probably would wish to amend the complaint by adding new claims. We discussed the possibility of a stipulation allowing you to amend the complaint, and ultimately we agreed that you would prepare for my examination a proposed amended complaint incorporating such additional claims.

Since your clients are holding my clients' money (improperly and fraudulently, as we have alleged in the counterclaims) I must now insist that you proceed promptly in accordance with our understanding. If you still wish to amend the complaint please let me see a copy of the current proposed amendment. If not, will you please reply to the counterclaims.

I understand that you will probably want a week or 10 days in which to prepare your papers, and I am prepared to be accommodating as before. However, you must understand that I cannot allow this matter to drift. Therefore, will you please call me promptly to let me know what you now propose to do and when.

Best personal regards.

Sincerely,

PM:prd

DEFENDANTS' EXHIBIT XXXX. E 893

LEON FINLEY
STEVEN J. KUMBLE
NEIL UNDERBERG
ROBERT S. PERSKY
HERBERT F. ROTH
DONALD ZIMMERMAN
NORMAN ROY GRUTMAN

HOWARD M. COHEN
THEODORE J. GREENE
ALAN M. GELB
B. HOWARD RAPPAPORT
RICHARD E. CARTER
LEWIS H. SANDLER
MICHAEL A. BAMBERGER

PAUL R. ALTER
STANLEY L. GOLDEN
JOHN P. A. MARCIN
DONALD S. SNIDER
ROBERT E. PEDUZZI
STEPHEN A. WEISS
L. MARTIN GIBBS
ROBERT L. FALKER
LENORE D. KALMUS
SHELDON M. GOLDSTEIN

WILLIAM F. ROSENBLUM, JR.
STUART E. BERELSON
DAVID S. HERSHBERG
STEPHEN G. DICKERMAN
HOWARD A. ROSENSTEIN
ROBERT G. FRIEDMAN
ALAN J. MOGILNER
RICHARD S. COLLINS
THOMAS C. LAMBERT
JAMES C. MULLINS

477 MADISON AVENUE
NEW YORK, NEW YORK 10022

371-5900
(AREA CODE 212)

CABLE: LENFINLEY
NEW YORK

July 23, 1971

Mr. Philip Mandel, Attorney at Law
Golden, Wienshienk & Mandel
10 East 40th Street
New York, New York 10016

Re: Newburger, Loeb & Co., Inc., etc.
v. Charles Gross, et al.
Our file no. 1629.112

Dear Mr. Mandel:

This will acknowledge receipt of your letter of July 19 to Mr. Gelb with regard to the above-captioned action.

Please accept my assurances that there has been no intentional delay by Mr. Gelb in fulfilling his part of his understanding with you. As you know, he is out of town, having been called to Tulsa the weekend of June 26 to defend a client in a lawsuit which involves not only a very substantial amount of money, but which, through an extant temporary injunction, threatens the very survival of our client in a highly competitive market. Mr. Gelb is now on trial before the Hon. William A. Berry, Chief Justice of the Oklahoma Supreme Court; he anticipates that this matter can be concluded within the next two or three weeks and will then return to New York and the business at hand.

If you can abide with us until August, you may be sure that Mr. Gelb will be in touch with you immediately upon his return. Meanwhile, I want you to know that your patience and forebearance in this matter are greatly appreciated.

Sincerely yours,

Donald Zimmerman

DZ/js

DEFENDANTS' EXHIBIT XXXX.

FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH

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LEON FINLEY
STEVEN J. KUMBLE
NEIL UNDERBERG
ROBERT S. PERSKY
HERBERT P. ROTH
DONALD ZIMMERMAN
NORMAN ROY GRUTMAN

HOWARD M. COHEN
THEODORE J. GREENE
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ALAN J. MOGILNER
RICHARD S. COLLINS
THOMAS C. LAMBERT
JAMES C. MULLINS

477 MADISON AVENUE,
NEW YORK, NEW YORK 10022

371-5900
(AREA CODE 212)

CABLE: LENFINLEY
NEW YORK

August 18, 1971

Phillip Mandel, Esq.
Golden, Wienshienk & Mandel
10 East 40th Street
New York, New York 10016

Re: Newburger, Loeb & Co., Inc., etc.
v. Charles Gross, et al.
Our File 1629.112

Dear Phil:

This confirms our telephone conversation today wherein we agreed that plaintiffs will deliver a proposed form of amended complaint in the captioned matter to your office no later than September 8, 1971.

In the meantime please accept my apology for the lengthy delay in responding to your communications which, as I have advised you, was occasioned by the very surprising extension of a two-day hearing in Tulsa to a seven-week trial under the most pressing of circumstances.

Sincerely,

FINLEY, KUMBLE, UNDERBERG,
PERSKY & ROTH

Alan M. Gelb

AMG:afp

DEFENDANTS' EXHIBIT XXXX.

FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH

E 895

LEON FINLEY
STEVEN J. KUMBLE
NEIL UNDERBERG
ROBERT S. PERSKY
HERBERT P. ROTH
DONALD ZIMMERMAN
NORMAN ROY GRUTMAN

HOWARD M. COHEN
THEODORE J. GREENE
ALAN M. GELB
B. HOWARD RAPPAPORT
RICHARD E. CARTER
LEWIS H. SANDLER
MICHAEL A. BAMBERGER

PAUL R. ALTER
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LENORE D. KALMUS
SHELDON M. GOLDSTEIN

WILLIAM F. ROSENBLUM, JR.
STUART E. BERELSON
DAVID E. HERSHBERG
STEPHEN G. DICKERMAN
HOWARD A. ROSENSTEIN
ROBERT G. FRIEDMAN
ALAN J. MOGILNER
RICHARD S. COLLINS
THOMAS C. LAMBERT
JAMES C. MULLINS

477 MADISON AVENUE
NEW YORK, NEW YORK 10022

371-5900
(AREA CODE 212)

CABLE: LENFINLEY
NEW YORK

September 14, 1971

BY HAND

Philip Mandel, Esq.
Golden, Wienshienk & Mandel
10 East 40th Street
New York, New York 10016

Re: Newburger, Loeb & Co., Inc., etc.
v. Charles Gross, et al.
Our file no. 1629.112

Dear Phil:

Pursuant to our telephone conversation wherein we agreed that Plaintiff would deliver a proposed form of Amended Complaint in the captioned matter, the same is enclosed. Please accept my apologies for its late delivery.

I look forward to seeing you tomorrow.

Sincerely yours,

FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH

By: Alan M. Gelb

AMG/js

Enclosure

DEFENDANTS' EXHIBIT YYYY.

First proposed amended complaint dated June 2, 1971

DEFENDANTS'
EXHIBIT YYYY.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

E 896

NEWBURGER, LOEB & CO., INC., as Assignee of Claims of David Buckley and Mary Buckley, and Newburger, Loeb & Co.,

Plaintiff,

- against -

CHARLES GROSS, MABEL BLEICH and GROSS & CO.,

Defendants.
----------x

AMENDED COMPLAINT

Index No.

Plaintiff, complaining of defendants by its undersigned attorneys, Messrs. FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH, alleges, upon information and belief that:

JURISDICTION

1. This Court's jurisdiction is based upon: Section 22(a) of the Securities Act of 1933, as amended, 15 U.S.C. §77v(a) (the "Securities Act"); Section 27 of the Securities Exchange Act of 1934, as amended, 15 U.S.C. §78aa (the "Exchange Act"); and the principles of pendant jurisdiction.

2. This action is instituted as the result of defendants' violation of Section 17(a) of the Securities Act; Sections 10(b) and 15 (c) of the Exchange Act; the Rules and Regulations of the Securities Exchange Commission (the "SEC") promulgated under both Acts, and in particular: Rule 10b-5, 17 C.F.R. 240.10b-5; Rule 15c1-7, 17 C.F.R.

240.15c1-7; the Rules of the National Association of Security Dealers (the "NASD"); and common law principles.

PLAINTIFF

3. Plaintiff Neuburger, Loeb & Co., Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 5 Hanover Square, New York, New York.

4. On or about December 30th, 1970, for good and sufficient consideration, David Buckley and his wife Mary Buckley (the "Buckleys"), then residing at 82 West River Road, Rumson, New Jersey, assigned to Neuburger, Loeb & Co., a New York limited partnership, all of the claims and causes of action against the defendants herein.

5. On or about February 11, 1971, for good and sufficient consideration, Neuburger, Loeb & Co. assigned to the plaintiff, Neuburger, Loeb & Co., Inc. all of the claims and causes of action against the defendants herein, which were assigned to it by the Buckleys.

DEFENDANTS

6. Defendant Charles Gross is an individual residing at 32 The Intervale, Roslyn Heights, New York. During all relevant times upon information and belief, he was a partner, agent and employee of defendant Gross & Co.

7. Defendant Mabel Bleich is an individual residing at 1020 Grand Concourse, Bronx, New York. During all relevant times, upon information and belief, she was a partner, agent and employee of defendant Gross & Co.

8. Defendant Gross & Co., upon information and belief, was a partnership organized and existing under the laws of the State of New York. During all relevant times, it was principally engaged as a broker and dealer in securities, transacting business in the City, County and State of New York.

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FOR A FIRST CAUSE OF ACTION

9. This first cause of action is instituted under Section 22(a) of the Securities Act to enforce the liability created by Section 17(a) of the Securities Act.

10. During a four and a half (4-1/2) year period between April 1962 and August 1966, the defendants, by the use of the mails and other instruments of transportation or communication in interstate commerce, directly and indirectly engaged in transactions, practices or courses of business, hereinafter more fully set forth, which operated and were calculated to operate as a fraud and deceit upon the Buckleys, in connection with the offer and sale of securities.

11. Between April 1962 and August 1966, the Buckleys maintained a margin account with defendant Gross & Co.

12. During that 4-1/2 year period, defendant Charles Gross was the partner and registered representative of defendant Gross & Co., with which the Buckleys dealt.

13. During that 4-1/2 year period, defendant Charles Gross suggested, encouraged and effected a total of more than 1,100 transactions in the margin account of the Buckleys.

E 899

14. Upon information and belief, all of the more than 1,100 transactions effected in the margin account of the Buckleys were made pursuant to the advice of defendant Charles Gross, the Buckleys relying not only upon the professed knowledge and expertise of defendant Charles Gross in the securities market, but also upon the fiduciary relationship of broker to customer.

15. The total dollar amount of purchases and sales during that 4-1/2 year period was $9,329,557. The average investment by the Buckleys' in the account during that same period was $107,520. Thus, the average investment of the Buckleys' in the account was turned over approximately 40 times.

16. The unusually excessive and, under the circumstances, totally unwarranted heavy trading was not consistent with and was in derogation of defendant's primary duty to advise and encourage sound investment decisions.

17. The unusually excessive and, under the circumstances, totally unwa ed heavy trading in the Buckleys' account was suggested, encouraged and effected primarily for the purpose of generating commissions, which, upon information and belief, were in excess of $75,000.

18. The unusually excessive and, under the circumstances, totally unwarranted heavy trading in the Buckleys' account resulted in net losses to the Buckleys exceeding $174,000.

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19. The defendant Mabel Bleich as a partner of defendant Gross & Co., was under the obligation to properly review the actions of defendant Charles Gross as well as supervice the transactions in the Buckleys' account, which upon information and belief, defendant Mabel Bleich failed to do and for which she is jointly and severally liable.

FOR A SECOND CAUSE OF ACTION

20. This second cause of action is instituted under Section 27 of the Exchange Act, to enforce rights arising out of defendants' violation of Section 10 of the Exchange Act, and Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5.

21. Plaintiff repeats each and every allegation set forth in paragraphs "10' to "19" with the same force and effect as if the same were hereat fully set forth.

FOR A THIRD CAUSE OF ACTION

22. This third cause of action is instituted under Section 27 of the Exchange Act, to enforce rights arising out of defendants' violation of Section 15(c) of the Exchange Act and Rule 15c1-7 promulgated thereunder, 17 C.F.R. 240.15c1-7.

23. Plaintiff repeats each and every allegation set forth in paragraphs "10" to "19" with the same force and effect as if the same were hereat fully set forth.

901

FOR A FOURTH CAUSE OF ACTION

24. Plaintiff repeats each and every allegation set forth in paragraphs "10" to "19" with the same force and effect as if the same were hereat set forth in full.

25. Defendants have violated common law duties owed by them to the Buckleys.

FOR A FIFTH CAUSE OF ACTION

26. On or about January 1, 1969, defendant CHARLES GROSS entered into an agreement in writing (the "Partnership Agreement"), wherein and whereby the parties thereto agreed to conduct a general brokerage business in securities and commodities under the firm name and style of Newburger, Loeb & Co (the "Firm") upon the terms and conditions set forth therein.

27. Thereafter, from time to time, the Partnership Agreement was amended, the Partnership Agreement as amended hereinafter called "Amended Partnership Agreement."

28. Paragraph 1.2 of the Partnership Agreement and the Amended Partnership Agreement named defendant CHARLES GROSS as a general partner in the Firm.

29. Paragraph 4.2 of the Partnership Agreement and the Amended Partnership Agreement provided in part that:

"The General Partners as among themselves shall

be governed by the following rules of conduct:

(a) Each General Partner shall:

(2) Exercise his best efforts in furtherance of the Firm business;

(3) Conform to the rules of those Exchanges to which the Firm belongs or on which they deal through a partner (in case of conflict, the rules of the New York Stock Exchange shall govern); and

(4) Exercise due care in the performance of his activities for the Firm. . .

(b) No General Partner shall:

(2) Wilfully do any act adverse to the interest of the Firm;

(3) Except as provided in paragraph 4.4, make any investment for the Firm account or enter into any syndicate. . ."

30. Paragraph 4.3 of the Partnership Agreement and the Amended Partnership Agreement provided, in part, that:

"Leo Stern, Robert L. Newburger, Andrew M. Newburger, Robert L. Stern and Charles H. Gross are constituted an Executive Committee of the General Partners, which Committee by affirmative vote of a majority of its members shall have full power and authority on behalf of all of the partners of this Firm at any time and from

time to time to manage the affairs and business of the partnership to the exclusion of the then General Partnership, except where these Articles or the rules and regulations of any Securities Exchange of which the partnership is a member shall require otherwise."

31. Paragraph 4.4 of the Agreement provided that:

"The Executive Committee designated in paragraph 4.3, or its designee or designees, is further authorized and empowered to make investments for the partnership and to enter into syndicates on behalf of the partnership in connection with any matter, thing or venture which they in their discretion deem proper."

32. Between on or about October 7, 1969, and on or about April 28, 1970, defendant GROSS breached the Partnership Agreement and the Amended Partnership Agreement, and further, in violation of his fiduciary obligations to the Firm, purchased 39,100 shares of the common stock in City Investing Corp. for and on behalf of the Firm, and further engaged in transactions on behalf of the Firm in warrants of Tyco Laboratories, Inc.

33. Said purchases and transactions were made without designation, permission or approval by the Executive Committee of the Firm.

34. By virtue of the foregoing, the Firm was damaged in the sum of $140,682.45, no part of which has been paid.

35. Prior to the commencement of this action, the

foregoing claim was assigned by the Firm to Plaintiff. E 904

FOR A SIXTH CAUSE OF ACTION

36. Repeats and realleges the allegations contained in paragraphs "26", "27", "28", "29", "30" and "31" of the Amended Complaint.

37. In further breach of the Partnership Agreement and the Amended Partnership Agreement, defendant GROSS made, caused and permitted the Firm to make material misrepresentations to the Board of Governors of the New York Stock Exchange, resulting in damage to the Firm of $50,000.

38. Prior to the commencement of this action, the foregoing claim was assigned by the Firm to Plaintiff.

FOR A SEVENTH CAUSE OF ACTION

39. Repeats and realleges the allegations contained in paragraphs "26". "27", "28" and "29" of the Amended Complaint.

40. Defendant GROSS has failed and refuses to make repayment to the Firm of a $500 petty cash advance, or of $1,600 in insurance premiums for his sole and exclusive benefit.

FOR AN EIGHTH CAUSE OF ACTION

41. Repeats and realleges the allegations contained in paragraphs "26", "27", "28", "29", "30" and "31" of the Amended Complaint.

42. At all times hereinafter alleged, defendant

GROSS was a member of the Executive Committee of the Firm and one of its managing partners. E 905

43. By virtue of his said position, defendant GROSS was aware that the Firm was in severe financial difficulties.

44. Defendant, on behalf of the Firm, executed a lease on new space for the Firm (the "Lease").

45. Subsequent to the execution of the Lease, it was determined by the Firm that it was unable, due to severe financial difficulties, to occupy the premises demised pursuant to the Lease.

46. Defendant GROSS, with knowledge of that decision, and of the severe financial difficulties of the Firm, received an offer on behalf of the Firm from the landlord named under the terms of the Lease, wherein and whereby the landlord offered to terminate the Lease and to pay to the Firm the sum of $100,000 for the repurchase of the Lease.

47. In breach of his fiduciary duties to the Firm, and in breach of the Partnership Agreement and the Amended Partnership Agreement, defendant GROSS failed to advise the Firm of this offer by the landlord under the Lease.

48. By virtue of the foregoing, the Firm was deprived of said sum of $100,000, and was further compelled to make payment to the landlord of the sum of $430,000 in order to "buy out" the Lease, all to the damage of the Firm in the sum of $530,000.

49. Prior to the commencement of this action, the foregoing claim was assigned by the Firm to Plaintiff.

FOR A NINTH CAUSE OF ACTION

50. Repeats and realleges the allegations contained in paragraphs "26", "27", "28", "29" and "30" of the Amended Complaint.

51. Defendant GROSS, as a managing partner of the Firm, set salaries for his various employees from time to time.

52. In breach of the Partnership Agreement and the Amended Partnership Agreement, and in violation of his fiduciary duties to the Firm, defendant GROSS caused wasteful payments to be made as purported salary to one MABEL BLEICH.

53. Said payments were made, not for sufficient or adequate value received by the Firm for the services of MABEL BLEICH, but as and for the acquittal of a personal responsibility by defendant GROSS and his family.

54. By virtue of the foregoing, the Firm was damaged in the sum of $20,000.

55. Prior to the commencement of this action, the foregoing claim was assigned by the Firm to Plaintiff.

FOR A TENTH CAUSE OF ACTION

56. Repeats and realleges the allegations contained in paragraphs "26", "27", "28", "29" and "30" of the Amended Complaint.

57. Prior to March, 1970, defendant GROSS recommended to the Executive Committee of the Firm that the Firm enter into a joint venture with one LOUIS BRACKER in the brokerage business.

58. Thereafter, on the basis of such recommendation, the Firm entered into said joint venture. E 907

59. In breach of the Partnership Agreement and the Amended Partnership Agreement, and further, in breach of his fiduciary duties to the Firm, defendant GROSS failed and omitted to state to the Firm or to its Executive Committee that he had been warned that BRACKER was not a person of good character or reputation in connection with his business dealings, or that the Firm would be likely to experience difficulties with BRACKER in the event it entered into a business relationship with him.

60. By virtue of the foregoing, the Firm was damaged in the sum of $60,000.

61. Prior to the commencement of this action, the foregoing claim was assigned by the Firm to Plaintiff.

FOR AN ELEVENTH CAUSE OF ACTION

62. Plaintiff repeats each and every allegation set forth in paragraphs "10" to "19" with the same force and effect as if the same were hereat set forth in full.

63. That by reason of the fraudulent conduct and deceit practiced and participated in by the defendants, the acts and practices engaged in by the defendants which constitute violations of the Securities Act, the Exchange Act and the Rules and Regulations promulgated under both acts, plaintiff has been compelled to and has engaged counsel to prosecute this action against the defendants herein.

64. Plaintiff has been informed and verily believes that the services to be rendered by said counsel could be extensive and may be required over a long period of time, and if not settled, will require substantial cash disbursements in the prosecution of this action by reason of the complexity of the transactions in the account of the Buckleys, and will further require extensive examinations before trial and that the fair and reasonable value of the services to be rendered by said counsel in the investigation, preparation and trial of this action will be in excess of $50,000.

E 908

WHEREFORE, plaintiff demands judgment in its favor and against defendants as follows:

(1) On the FIRST, SECOND, THIRD and FOURTH CAUSES OF ACTION, money damages as against the defendants, CHARLES GROSS, MABEL BLEICH and GROSS & CO., in excess of $249,000, jointly and severally, or such other measure of recovery for defendants' violations, as the court may deem just and proper;

(2) On the FIFTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $140,682.45;

(3) On the SIXTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $50,000;

(4) On the SEVENTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $2,100;

(5) On the EIGHTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $50,000;

(6) On the NINTH CAUSE OF ACTION, for money damages

against defendant CHARLES GROSS in the sum of $20,000. E 909

(7) On the TENTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $60,000.

(8) On the ELEVENTH CAUSE OF ACTION, money damages against the defendants, jointly and severally, in excess of $50,000, or such other sum as the court may find just and reasonable, as and for plaintiff's counsel fees; and

(9) Such other, further and different relief as the court may deem proper;

together with interest from the date of the violations or wrongs hereinbefore set forth, with costs and disbursements.

Dated: New York, New York
June 2, 1971

FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH

By: Alan M. Gelb
A Member of the Firm
Attorneys for Plaintiff
477 Madison Avenue
New York, New York 10022
(212) 371-5900

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PARTNERSHIP

File 2 Copies

DEFENDANTS' EXHIBIT BBBBB.

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NEW YORK STOCK EXCHANGE

Financial Supplement to Application of

FRED KAYNE, Dated January 20, 1970

Concerning the Member Firm,

Newburger, Loeb & Co.

1. My net worth (including equities in real estate, securities and other property) is in excess of $ 300,000.00

STRIKE OUT INAPPLICABLE WORDS IN BRACKETS. A STATEMENT ANSWERED "WILL NOT" REQUIRES NO FURTHER ANSWER.

2. I [will] [~~will not~~] make a capital contribution to the firm of [$ 50,000 in cash at 0 % interest] [$ _____ in market value of securities at _____% interest].

3. I [~~will~~] [will not] make a subordinated loan to the firm of $_____ in [cash] [market value of securities], for which I will receive interest at the rate of _____%. The subordinated loan will expire _____.

4. I [~~will~~] [will not] subordinate my claim to the equity in my account with the firm, captioned _____, which has a [debit] [credit] balance of $_____ and long securities with a market value of $_____. As compensation therefor, I will receive interest at the rate of _____%. The subordination of my claim will expire _____.

5. (a) The firm [~~will~~] [will not] pay me a salary of $_____ per _____.

   (b) I [will] [~~will not~~] share in 1.8 % of firm profits and 1.8 % of firm losses.

   (c) I [~~will~~] [will not] have a drawing account of $_____ per _____ against my interest in firm profits.

   (d) The firm [~~will~~] [will not] guarantee me compensation of $_____ a year, in salary and/or participation in firm profits.

6. (a) I have not borrowed, nor will I borrow, and no one other than myself has any interest in, any of the cash or securities to be contributed to firm capital, loaned to the firm, or included in my subordinated account with the firm (as the case may be) [EXCEPT AS FOLLOWS]:

No exceptions

Resp GG

(b) I have not given, nor will I give without the prior approval of the Exchange, any note, obligation, acknowledgment, assignment or other agreement with respect to the capital to be contributed, the property to be loaned, or the property included in my subordinated account (as the case may be); nor with respect to any interest, participation in profits or compensation which I will receive from the firm [EXCEPT AS FOLLOWS]:

No exceptions

(c) (FOR PROPOSED ALLIED MEMBERS ONLY) I have no other loans or borrowings reportable under Rule 420 of the Board of Governors [EXCEPT AS FOLLOWS]:

No exceptions

(The space above may be used for the fuller explanation of any Statement in this Supplement.)

Fred Kayne

FRED KAYNE (Signature of Applicant)

I certify that the answers to Statements 2 through 5 above are correct.

Fred O'Neill

(Signature of Member-Partner or Senior Partner of Firm)

DEFENDANTS' EXHIBIT CCCCC.

RISHER, MUH AND CO., INC.
527 MADISON AVENUE
NEW YORK, N. Y. 10022
(212) 661-7053

E 912

December 9, 1970

Mrs. Mabel Bleich
5 Hanover Square
New York, New York

Dear Mrs. Bleich:

As you may know by now, Risher, Muh and Co., Inc. has been given notice to discontinue its services to Newburger, Loeb & Co. The effective date for the discontinuance is Friday, December 11, 1970.

Risher, Muh and Co., Inc. feels that it has made substantial achievements in Newburger, Loeb's behalf and moreover we believe strongly in the long run viability of Newburger, Loeb & Co. Therefore by this letter, Risher, Muh and Co., Inc. continues in effect the offer to the Limited Partners to reorganize the firm. The General Partners did not accept this offer.

Risher, Muh and Co., Inc. strongly believes that acceptance of this offer by the General and Limited Partners would provide an opportunity to restore the economic viability of Newburger, Loeb. A copy of this letter is being sent to Messrs. Steefel, Eisenberg and Richenthal and to each individual Limited Partner. Since there may not be sufficient time for the letter to reach each Limited Partner, Risher, Muh and Co., Inc. would appreciate it if Messrs. Steefel, Eisenberg and Richenthal would ensure that this letter's contents are communicated to each Limited Partner prior to the December 11th meeting.

Yours sincerely,

Paul D. Risher

Paul D. Risher

PDR:jla

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D.

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DEFENDANTS' EXHIBIT DDDDD

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DEFENDANTS' EXHIBIT DDDDD.

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AMENDED

CERTIFICATE OF LIMITED PARTNERSHIP

OF

NEWBURGER, LOEB & CO.

THIS IS TO CERTIFY That the undersigned persons, being all of the members of the limited partnership of NEWBURGER, LOEB & CO., having signed and acknowledged this Certificate amending the certificates heretofore filed in the office of the Clerk of the County of New York, do hereby state that the Certificate of Limited Partnership, as amended, heretofore filed in the office of the Clerk of the County of New York is hereby further amended to reflect a change in the name of the limited partnership as follows:

The name of the Partnership is NS HOLDINGS & CO.

General Partners:

Edward R. Halle, by Laurence J. Belzer, attorney in fact

William A. Neuberger, by Laurence J. Beelzer, attorney in fact

Gerard J. Richards, by Laurence Beelzer, attorney in fact

Edmund Lubin, by Laurence Beelzer, his attorney in fact

Richard D. Stern, by Richard Rabinowitz, Attorney in Fact

Richard D. Stern, by Richard Rabinowitz, Attorney in Fact

Microfilm 0 Page 19352

DEFENDANT'S EXHIBIT
S.D.N.Y.

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914

DEFENDANTS' EXHIBIT DDDDD.

Limited Partners:

Willard S Isle, by
Thomas R. Hopkins, Attorney-in-fact

ESTATE OF LESTER M. NEWBURGER
by Donald C. Ewing - Executor & Trustee

Estate of Morris Neuberger, deceased
by George B. Leon, Executor

Joseph W. Duarte, by
David Abrams, Attorney-in-fact

GERALD FRANK, by
[signature], Attorney in fact

ESTATE OF LESTER M. NEUBERGER
by Elizabeth Neuberger EXECUTRIX + TRUSTEE

Jack W. Cochole, by [signature] Attorney-in-fact

Paul A. Bromby by [signature] Attorney-in-fact

Philip Schulman by [signature] Attorney-in-fact

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DEFENDANTS' EXHIBIT DDDDD.

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STATE OF NEW YORK)
: SS.:
COUNTY OFNEW YORK)

On the 11th day of February, 1971, before me personally came the partners of NEWBURGER, LOEB & CO., to me known and known to me, who executed the foregoing instrument and who duly acknowledged to me that they executed the same.

Notary Public

MICHAEL A. BAMBERGER
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1972

Micro Film 0 PAGE 19354

STATE OF NEW YORK, COUNTY OF NEW YORK)SS:
I, NORMAN GOODMAN, COUNTY CLERK AND CLERK OF THE SUPREME COURT, NEW YORK COUNTY
DO HEREBY CERTIFY THAT I HAVE COMPARED THIS COPY WITH THE ORIGINAL
FILED IN MY OFFICE ON APR 5 1971 AND THAT THE SAME IS A
CORRECT TRANSCRIPT THEREFROM AND OF THE WHOLE OF SUCH ORIGINAL.
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
JUL 31 1978
COUNTY CLERK AND CLERK OF THE SUPREME COURT, NEW YORK COUNTY.
FACSIMILE SIGNATURE USED PURSUANT TO SEC. 903, COUNTY LAW.
FEE PAID: $ 4.00

No. 02472

DEFENDANTS' EXHIBIT DDDDD.

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THIS RECORD NOT TO BE REMOVED FROM THE COUNTY CLERK'S OFFICE

FILED BY

INDEXED BY

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HERKIMER COUNTY CLERK'S OFFICE

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FINLEY, KUMBLE, HEINE, UNDERBERG & GRUTMAN

DEFENDANTS' EXHIBIT EEEEE.

E 917

LEON FINLEY
STEVEN J. KUMBLE
ANDREW N. HEINE
NEIL UNDERBERG
HERBERT F. ROTH
NORMAN ROY GRUTMAN
THEODORE J. GREENE
ALAN M. GELB
B. HOWARD RAPPAPORT

RICHARD E. CARTER
MICHAEL A. BAMBERGER
L. MARTIN GIBBS
STEPHEN A. WEISS
ROBERT E. PEDUZZI
ROBERT L. FALKER
JEFFREY A. FILLMAN
GERALD ADLER
DONALD S. SNIDER

JOHN P. A. MARCIN
LENORE D. KALMUS
SHELDON M. GOLDSTEIN
WILLIAM F. ROSENBLUM, JR.
DAVID S. HERSHBERG
RICHARD S. COLLINS
JOHN R. CORNELL
GEORGE B. YANKWITT
DAVID A. SANDERS
MARK SCHWARZ

MITCHELL FENTON
HELENE C. SCHECHTMAN
STEPHEN J. TREADWAY
JEFFREY STEPHEN RAMER
ALAN R. BIALECK
DANIEL B. MAHONEY
ELWOOD F. COLLINS, JR.
JONATHAN J. SILBERMANN
JAMES E. MERRIMAN
JERRY W. BAIRD

477 MADISON AVENUE

NEW YORK, NEW YORK 10022

371-5900
(AREA CODE 212)

CABLE: LENFINLEY
NEW YORK

April 29, 1974

David Abrams, Esq.
Richenthal, Abrams & Moss, Esqs.
122 East 42nd Street
New York, New York 10017

Philip Mandel, Esq.
Golden, Wienshienk & Mandel
10 East 40th Street
New York, New York 10016

Lester Esterman, Esq.
Hart & Hume, Esqs.
10 East 40th Street
New York, New York 10016

Re: Newburger, Loeb v. Gross

Gentlemen:

We are enclosing a copy of a letter advising our clients of our intention to withdraw in this case which you will find self explanatory.

A formal motion for leave to withdraw will be served later today.

Very truly yours,

Herbert F. Roth

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

EEEEE

FINLEY, KUMBLE, HEINE, U..DERBERG & GRUTMAN

DEFENDANTS' EXHIBIT EEEEE. E 918

LEON FINLEY
STEVEN J. KUMBLE
ANDREW N. HEINE
NEIL UNDERBERG
HERBERT F. ROTH
NORMAN ROY GRUTMAN
THEODORE J. GREENE
ALAN M. GELB
B. HOWARD RAPPAPORT

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JAMES E. MERRIMAN
JERRY W. BAIRD

477 MADISON AVENUE
NEW YORK, NEW YORK 10022

371-5900
(AREA CODE 212)

CABLE: LENFINLEY
NEW YORK

April 25, 1974

Mr. Alex Aixala
1221 Venetian Way
Miami, Florida

Mr. Lawrence J. Berkowitz
10717 Wilshire Boulevard
Los Angeles, California 90024

Hon. Harry B. Frank
An Executor of the Estate of Ned D. Frank
308 East 74th Street
New York, New York

Mr. Fred Kayne
15947 High Knoll Road
Encino, California 91316

Mr. Robert Muh
907 Chantilly Road
Los Angeles, California 90024

Mr. Andrew M. Newburger
134 W. 58th Street
New York, New York 10019

Mr. Robert L. Newburger
29 East 64th Street
New York, New York

Robert S. Persky, Esq.
c/o Persky & Jarblum
One Rockefeller Plaza
New York, New York 10020

Mr. Harold J. Richards
60 Gramercy Park North
New York, New York

Mr. Paul D. Risher
Newburger, Loeb & Company
5 Hanover Square
New York, New York

Mr. Sanford Roggenburg
2532 Bradley Court
Merrick, New York

Mr. John F. Settel
125 Brookside Drive
Greenwich, Connecticut

Mr. Charles S. Sloane
1248 So. Camden Drive
Los Angeles, California

Mr. Richard D. Stern
196 East 75th Street
New York, New York

Mr. Richard D. Stern
An Executor of the Estate
of Leo Stern
196 East 75th Street
New York, New York

Mr. Robert L. Stern
4600 So. Four Mile Run Drive
Arlington, Virginia 22204

Re: Newburger, Loeb & Co., Inc. v. Charles Gross, et al v. Newburger, Loeb & Co., et al

Gentlemen: DEFENDANTS' EXHIBIT EEEEE.

E 919

Please take notice that we are hereby confirming the oral advice previously given to you that you should make immediate arrangements to obtain new counsel to represent your interests in the above named matter. As we previously explained to you it is our intention to move forthwith to withdraw as counsel of record for all parties that we represent in this proceeding.

On Thursday afternoon, April 11th, 1974 a meeting was held in this matter at our offices to which all defendants were invited to attend. We met with many of you at that time to explain that there was a substantial unpaid indebtedness outstanding due and owing to our law firm for legal services rendered by us on your behalf.

We further explained at that time that it would be necessary for us to withdraw as counsel unless arrangements were made to promptly insure the payment of your past indebtedness and to assure payment for services we believed would necessarily be incurred in connection with the future ongoing requirements of this lawsuit.

At the request of those of you present at the April 11th meeting, and as a courtesy to you, we acceded to the request of those of you present to defer our withdrawal as counsel until Thursday, April 25th. Your request for the adjournment was to allow those of you present to meet with each other and to communicate with those not present, to attempt to see if reasonable arrangements could be made for the payment of our fees or to explore alternative arrangements for legal representation with us or with other counsel.

We made it entirely clear on the occasion of the April 11th meeting that time was of the essence with respect to your making a decision. The reason for the urgency of time was the result of the fact that there was and is a May 15th Court deadline in force and effect for completion of discovery and inspection proceedings in this case and with trial expected by the Fall. With every day that passed work of substance had to be done. Adjournments could not be obtained because of the May 15th Court deadline. It was because of this that prompt and immediate decision was and is essential.

We were advised earlier today that there will not be a meeting as scheduled for today and that you have not, will not or cannot make arrangements for payment to us of past legal services rendered or for future legal services that may be required.

DEFENDANTS' EXHIBIT EEEEE. E

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Accordingly, we are constrained to advise you definitively that we will not perform any further legal services in this matter and will immediately move to formally withdraw as counsel of record for you.

We wish to point out to you again as we did on April 11th, that it is of the utmost importance to those of you whom we represent to take immediate steps to see that your interests are protected.

Very truly yours,

FINLEY, KUMBLE, HEINE,
UNDERBERG & GRUTMAN

By Herbert F. Roth
Herbert F. Roth

HFR/vw

New Burger Loeb & Co
P & L for the 2 month period
ending 2/27/70

DEFENDANTS' EXHIBIT FFFFF.

921

	YEAR TO DATE
Income - Schedule A	882 144
Direct expenses - Schedule B	463 454
	454 720
Indirect Expenses:	
Selling - Schedule C	38 818
Communications - Schedule D	13 356
Occupancy - Schedule E	102 372
Administrative and clerical salaries - Schedule F	48 094
General and Administrative - Schedule G	180 638
Allocation of operations costs	
Total	867 718
	(413 558)
Add - net interest income - Schedule H	145 471
Net income from operations	(298 087)
Add - investment income - Schedule I	71 023
Net income for the period	(227 064)

NEWBURGER LOEB & Co
P&L FOR THE 2 MONTH PERIOD
ENDING 2/27/70

E 922

DEFENDANTS' EXHIBIT FFFFF.

	YEAR DATE
Schedule A - Income:	
Commissions - NYSE	342,686
- ASE	190,332
- NOTC	33,363
- OTC	49,763
	197,044
Clearance income	38,763
Gross commissions earned from introduced accounts	27,722
Mutual funds	3,770
Underwriting	197,000
Selling groups	31,504
Options	1,716
Proxy	3,324
Sundry	896
~~Corporate fees~~	
~~Municipal bond trading~~	
COMMODITY COMM.	1,301
TENDER AND REDEMPTION INCOME	12,542
	887,144
Schedule B - Direct Expenses:	
Salesmen's commissions	301,042
Salaries - Traders	7,400
Floor brokerage	6,664
Clearing House charges	2,992
Commission fees	8,752
Dues and assessments	4,673
Automatic Computer service	51,280
Commissions paid on introduced accounts	11,009
Underwriting and syndicate expenses	100,000

Newburger Loeb & Co
P&L for the 2 months period
ending 2/27/70

E 923

DEFENDANTS' EXHIBIT FFFFF.

	YEAR TO DATE
Schedule C - Selling Expenses:	
Advertising	6341
Sales literature	1752
Statistical services	1264
Entertainment and travel	4750
Research salaries	14037
Corporate finance expenses	6143
	36817
Schedule D - Communication Expenses:	
Telephone and telegraph	42400
Tickers and projectors	1730
Quotation board and quote machines	30304
Stationery and supplies	21284
Postage	11026
	113356
Schedule E - Occupancy Expenses:	
Rent and storage charges	67846
Utilities	6504
Depreciation	14000
Repairs and maintenance	11104
Equipment rental (469)	7679
	108132
Schedule F - Administrative and Clerical Salaries:	
Salaries	37x913
Overtime	2311
Temporary help	5345
Meals	13
Personnel agency fees	2144
	47509

NEWBURGER LOEB & Co.
P&L FOR THE 2 MONTH
ENDING 2/27/70

E 924

DEFENDANTS' EXHIBIT FFFFF.

	YEAR To DATE
Schedule G - General and Administrative Expenses:	
Partners' salaries	63934
Manager's compensation	-
Employee fringe benefits	4,760
Legal and professional	22134
Unincorporated business taxes	-
Other taxes	4738
Insurance and protection	8849
Bad debts	10
Training and seminars	1765
Donations	118
Moving expense	-
Licenses and fees	1815
~~Petty cash~~ Miscellaneous	7050
Dues and subscriptions	2911
Stationery and office supplies	-
Postage	-
Conversion expenses	8627
Pensions - other	4163
Travel and entertainment	2777
Bank charges (interest)	2962
error expense	1005
	180628
Schedule H - Interest Income:	
Income - customers	104280
- SPECIALISTS	22930
- stocks ~~loaned~~ BORROWED	19850
	147060
Expense - bank loans	30197
- capital	8020
- stocks ~~borrowed~~ LOANED	19765
	57982
Net interest income	89478
INVESTMENT INCOME	
Income from Trading	26156
Net income Rosen Trading dept	17200
From trading accounts	(21601)
Municipal bond trading	11141
	72896

Form R-1414

NEWBURGER LOEB AND CO.

F

DEFENDANTS' EXHIBIT FFFFF.

STATEMENT OF INCOME
MAR 26, 1970

925

	MARCH 1970	FEB 1970	JAN 1970	YEAR TO DATE
Income - Schedule A	285738 -	352636 -	536508 -	1177882 -
Direct expenses - Schedule B	149339 -	226412 -	236995 -	612746 -
	121399 -	126207	299513	547114 -
Indirect Expenses:				
Selling - Schedule C	12875 -	23195 -	18623 -	54693 -
Communications - Schedule D	51631 -	58192 -	61164 -	164987 -
Occupancy - Schedule E	50836 -	55602 -	52770 -	159208 -
Administrative and clerical salaries - Schedule F	171582 -	205768 -	222326 -	599676 -
General and Administrative - Schedule G	121658 -	119351 -	118878 -	359887 -
Allocation of operations costs				
Total	408582 -	488128 -	473761 -	1335451 -
	<287183 ->	<320901 ->	<174248 ->	<788332>
Add - net interest income - Schedule H	40873 -	70073 -	75398 -	186344 -
Net income from operations	<246310>	<250828 ->	<98850 ->	<601988>
Add - investment income - Schedule J	124429 -	63153 -	12870 -	125452 -
Net income for the period	<191881>	<193675 ->	<85980 ->	<476536>

R-1414

MENDURGER LOEB AND CO.

DEFENDANTS' EXHIBIT FFFFF. SUPPORTING SCHEDULES E 926

	MARCH 1970	FEB 1970	JAN 1970	YEAR TO DATE
Schedule A - Income:				
Commissions - NYSE	129 518 -	180 [illegible] -	154 014 -	473 201 -
- ASE	59 863 -	89 683 -	80 549 -	230 095 -
- NOTC	13 [illegible] -	12 [illegible] -	21 244 -	46 057 -
- OTC	21 114 -	19 [illegible] -	30 [illegible] -	72 [illegible] -
	223 186 -	305 764 -	286 230 -	815 230 -
Clearance income	5 161 -	12 605 -	26 358 -	44 124 -
Gross commissions earned from introduced accounts	21 401 -	18 262 -	9 [illegible] -	57 173 -
Mutual funds	7214 -	1 [illegible] -	1 [illegible] -	10 [illegible] -
Underwriting	—		197 000 -	197 000 -
Selling groups	14 982 -	< 395 >	4 [illegible] -	18 586 -
Options	407 -	61 -	417 -	975 -
Proxy	1311 -	1421 -	1703 -	4435 -
Sundry	5766 -	4179 -	4702 -	14667 -
Corporate fees				
Municipal bond trading				
Commodity Corp.	135 -	561 -	720 -	1416 -
TENDER & REORGANIZATION	783 -	12 852 -	2 692 -	16 325 -
	288 738 -	352 436 -	536 508 -	1177 882 -
Schedule B - Direct Expenses:				
Salesmen's commissions	103 944 -	153 126 -	147 [illegible] -	404 731 -
Planners	1200 -	1200 -	1200 -	3600 -
Floor brokerage	22 [illegible] -	28 [illegible] -	38 171 -	92 [illegible] -
Clearing House charges	2225 -	2 [illegible] -		5917 -
Commission fees	3360 -	4 [illegible] -	4333 -	12 [illegible] -
Dues and assessments	76 -	90 -	4583 -	417 [illegible] -
Automatic Computer service	21 545 -	25 202 -	26 [illegible] -	73 [illegible] -
Commissions paid on introduced accounts	8 [illegible] -	9 [illegible] -	5 [illegible] -	22 [illegible] -
Underwriting and syndicate expenses	< 633 >	1 [illegible] -	8 [illegible] -	9 [illegible] -
	167 339 -	226 [illegible] -	235 [illegible] -	[illegible] -

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DEFENDANTS' EXHIBIT FFFFF. — MEMBURGHR LOEB AND CO. — E — 927

SUPPORTING SCHEDULES

	MARCH 1970	FEB 1970	JAN 1970	YEAR TO DATE
Schedule C - Selling Expenses:				
Advertising	1977 -	4250 -	2091 -	8318 -
Sales literature	822 -	1934 -	4049 -	6805 -
Statistical services		183 -	881 -	1064 -
Entertainment and travel	1250 -	2762 -	1990 -	6002 -
Research salaries	7332 -	7332 -	7205 -	21869 -
CORP FINANCE EXP.	1494 -	3734 -	2409 -	7637 -
	12875 -	20195 -	18623 -	51693 -
Schedule D - Communication Expenses:				
Telephone and telegraph	19407 -	20593 -	21827 -	61827 -
Tickers and projectors	17157 -	2387 - 17655 -	2743 - 17660 -	53186 -
Quotation board and quote machines				
Stationery and supplies	9617 -	10451 -	12433 -	32501 -
Postage	5415 -	5506 -	6532 -	17453 -
	51631	53192	61164 -	176987 -
Schedule E - Occupancy Expenses:				
Rent and storage charges	36092 -	34730 -	33475 -	104297 -
Utilities	2078 -	3476 -	3158 -	8662 -
Depreciation	7000 -	7000 -	7000 -	21000 -
Repairs and maintenance	3767 -	5627 -	5977 -	15371 -
EQUIPMENT RENTAL	2396 -	4114 -	2560 -	9078 -
	50936 -	55602	52770 -	159209 -
Schedule F - Administrative and Clerical Salaries:				
Salaries				
Overtime				
Temporary help				
Meals				
Personnel agency fees				

NEWBURGER LOEB AND CO.
SUPPORTING SCHEDULES

E

928

DEFENDANTS' EXHIBIT FFFFF.

	MARCH 1970	FEB 1970	JAN 1970	YEAR TO DATE
Schedule G - General and Administrative Expenses:				
Partners' salaries	60459	61525	60000	181984
Manager's compensation				
Employee fringe benefits	1[illegible]	18992	2[illegible]68	56[illegible]
Legal and professional	1866	12134	10000	24000
Unincorporated business taxes				
Other taxes	4767	2038	1700	8505
Insurance and protection	4227	5527	3322	13056
Bad debts	7727	13	497	8237
Training and seminars	343	3065	2217	5625
Donations	157		118	275
Moving expense				
Licenses and fees	27	405	1270	1702
Miscellaneous	575	6163	830	7993
Dues and subscriptions	9089	755	2152	12000
Stationery and office supplies				
Postage				
Conversion expenses	4322	4327	4300	12927
Pension	2237	2245	1918	6400
Travel & Ent	2989	1947	1830	6766
Bank Charges	69	1074	1938	3081
Error Exp	4699	<1849>	2354	5204
	121658	114951	116268	352877
Schedule H - Interest Income:				
Income - customers	198216	233727	271053	702996
- stocks loaned Securities Borrowed	4780	19530	13613	37923
	202997	253260	284666	740919
Expense - bank loans	119561	134367	167230	421158
- capital	35485	40515	39192	115192
- stocks borrowed	4878	8305	11460	24643
	160124	183187	217882	561193
Net interest income	40873	70398	66784	179726
Investment Income				
Income from Trading	<4>	2[illegible]56	—	2[illegible]52
Realized Trading - Net	6100	36255	30[illegible]	72[illegible]
Trading Losses	1050	250	[illegible]	[illegible]
Net	[illegible]	[illegible]	[illegible]	[illegible]

0028

DEFENDANTS' EXHIBIT FFFFF.

Damages Page R-1414

NEWBURGER LOEB AND CO.

E

STATEMENT OF INCOME

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	JULY	MONTH OF AUGUST 1970	YEAR TO 8/28/70
Income - Schedule A	514 800	377 684 -	3632228 -
Direct expenses - Schedule B	294 420	209 477	1969850
	220 380	168 209	1662378
Indirect Expenses:			
Selling - Schedule C	31 805	10 207	176867
Communications - Schedule D	61 429	50 021	501797
Occupancy - Schedule E	59 527	50 472	433668
Administrative and clerical salaries - Schedule F	161 803	111 926	1035122
General and Administrative - Schedule G	107 957	57 953	964243
Allocation of operations costs			
Total	422 521	289 722 -	3512858 -
	(202 141)	(121 513)	(1850480 -)
Add - net interest income - Schedule H	43257	49088	448378 -
Net income from operations	(158 884)	(72 425)	(1402256)
Add - investment income - Schedule J	32 499	(5664)	31 136
Net income for the period	(126 385)	(78 089)	(1371120 -)

DEFENDANTS' EXHIBIT FFFFF.

E

NEUBURGER LOEB AND CO. — 930

SUPPORTING SCHEDULES

		Month of August 1972	Year to 8/31/72
Schedule A - Income:			
Commissions - NYSE	185968	136351	1327619
- ASE	46042	36122	515568
- NOTC	1638	12156	115023
- OTC	39769	16828	167322
- GROSS CREDITS	14176	6188	114671
	289593	201927	2242883
Clearance income	58233	21871	147212
Gross commissions earned from introduced accounts	104464	106299	843336
Mutual funds	4705	4166	26622
Underwriting	(3672)	5009	204718
Selling groups	(2737)	1216	37815
Options	556	594	5252
Proxy	5186	2774	27615
Sundry	282	(2378)	9287
Corporate fees SURCHARGE	5362	3393	27225
Municipal bond trading			
COMMODITY COMM.	1170	472	2303
TENDER - RECLAMATION	1416	—	22719
SURCHARGE	46242	31783	242886
	514800	377686	3632228
Schedule B - Direct Expenses:			
Salesmen's commissions	131176	79286	984621
SPECIAL TRUSTEES	600	300	9100
Floor brokerage	52990	30657	327465
Clearing House charges	5888	5072	29534
Commission fees	11001	5552	64077
Dues and assessments	—	200	5789
Automatic Computer service	22765	15637	185787
Commissions paid on introduced accounts	72000	72773	727865
Underwriting and syndicate expenses			
	294420	209177	1769850

DEFENDANTS' EXHIBIT FFFFF.

E 931

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NEWBURGER LOEB AND CO.

— SUPPORTING SCHEDULES —

		MONTH OF DECEMBER 1972		YEAR TO DATE 12/31/72	
Schedule C - Selling Expenses:					
Advertising	16722	923	—	37627	
Sales literature	555	516	—	[illegible]	
Statistical services	108	273	—	5496	
Entertainment and travel	7339	5779	—	51[illegible]	
Research salaries	5786	2254	—	50354	
[illegible]	1320	592	—	23132	—
	31805	10347		176417	
Schedule D - Communication Expenses:					
Telephone and telegraph	32148	29670	—	[illegible]	
Tickers and projectors	17105	9317		[illegible]	
Quotation board and quote machines		9702		95322	
Stationery and supplies	7905	3544		75182	
Postage	4771	4041		23305	
	61429	56024		501737	
Schedule E - Occupancy Expenses:					
Rent and storage charges	39655	36147		283776	
Utilities	20527	822		18232	
Depreciation	7000	7000		56000	
Repairs and maintenance	7274	4636		[illegible]	
[illegible]	3550	1217		25827	
	59527	50472		433284	
Schedule F - Administrative and Clerical Salaries:					
Salaried	154535	112268		[illegible]	
Overtime	1051	[illegible]		[illegible]	
Temporary help	2899	730		[illegible]	
Meals	1228	1135		[illegible]	
Personnel agency fees	60	—		14217	
	161803	114926		[illegible]	

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DEFENDANTS' EXHIBIT FFFFF.

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NEUBURGER LOEB AND CO. E

SUPPORTING SCHEDULES

		MONTH OF AUGUST 1971	YEAR TO 8/28/71
Schedule G - General and Administrative Expenses:			
Partners' salaries	41637	5820 -	395765
Manager's compensation			
Employee fringe benefits	6635	9211 -	22222
Legal and professional	14641	10700 -	123777
Unincorporated business taxes			
Other taxes	11772	15622 -	149526
Insurance and protection	5663	3419 -	37097
Bad debts	272	83	12016
Training and seminars	1267	340	10222
Donations	122	—	413
Moving expense		320	582 -
Licenses and fees	1488	132	5372
Petty cash MISCELLANEOUS	4075	2342	23158 -
Dues and subscriptions	4226	4525	38224
Stationery and office supplies			
Postage			
Conversion expenses	4300	4300	34177
PENSIONS	1503	311	12327 -
TRAVEL & ENT		741 -	11677
BANK CHARGES (INT)	30	17 -	3790
ERROR ACCT	10331 -	881 -	20312
	107457	52953	964943
Schedule H - Interest Income:			
Income - customers	183927	178589	1669497
- stocks loaned SPECIALISTS	1754	905	51734 -
	185681	179494	1721231
Expense - bank loans	108077	110406	1036640
- capital	20870	20000 -	219874 -
- stocks borrowed	13477	—	12683
	142424	130406	1273197
Net interest income	43257	49088	448224
GROSS TRADING	<1015 - >	—	<8922 - >
OTHER TRADING	10301	8927 -	112892
TRADING LOSS	13779	<4177 - >	<51738 >
NET TRADING	9134	<10419 - >	122582
	32499	<5641 - >	31136

DEFENDANTS' EXHIBIT GGGGG.

(5)

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MEMORANDUM E

May 11, 1970

Newburger, Loeb & Co.

At 3:30 p.m. Messrs. Gross, Stern, Newburger and Therese met with Messrs. Fitzgerald and Newman to discuss the firm's capital ratio and current loss.

A report as of March 26th, indicated a ratio of 1,404% with excess net capital of $741,416 and a three month loss of $358,331. It was estimated that the overall loss for the month of April would be approximately $222,000.

When asked what steps have been or would be taken to reverse the loss trend and reduce the capital ratio, we were told that the firm had just submitted and received emergency approval for the subordinated account of Geza and Kinko Polaty, the net effect which would increase capital by $253,000.

When asked whether there were any particular large blocks of securities in proprietary accounts, we were told that the only block is 30,000 shares of City Investing, which at May 11th, had an approximate market value of $420,000. To further elaborate what the firm is contemplating in way of reversing its loss trend and raising additional capital, we were told that:

1) The partnership payroll was reduced by $215,000 annually on March 1, 1970.
2) Interest paid to partners on their capital was reduced by approximately $175,000 annually on March 1, 1970.
3) Personnel costs have been reduced through layoffs and normal attrition besides the curtailment of overtime.
4) Plans are being made to discontinue the Brooklyn office, transferring its best producers to other locations.

DEFENDANTS' EXHIBIT GGGGG.

E 934

5) The loss sustained by the opening of the two California offices during January and February exceeded $63,000. This loss should be rapidly diminished and reversed.
6) Perlberg, Monness, Williams & Sidel commenced clearing through Newburger, Loeb & Co. on March 30, 1970. The firm estimates an additional $15-20,000 monthly profit from this association.
7) The firm estimates that the interim $15.00 service charge should add a minimum of $50,000 monthly to their income. During the month of April $24,800 was realized as a result of the surcharge and for the month of May $44,300 had been realized.
8) The firm is actively seeking new procedures and anticipates an increase in fees such as underwritings, private placements, etc..
9) The firm anticipates raising approximately $1,000,000 in subordinated capital within the next month. This capital will be in the form of customers subordinating their accounts.
10) Security capital of general partners will be either liquidated or added so as to provide about $300,000 in additional "good" capital.
12) General partners of Newburger, Loeb & Co. anticipate in excess of $250,000 in refunds of prepaid taxes for 1969, which funds will be added to their respective capital accounts.

At the conclusion of the meeting the partners were told that they could expect to receive a letter from the Exchange advising the firm that the Exchange should be advised of any potential capital withdrawals.

G.H.N.

NEWBURGER, LOEB & CO. DEFENDANTS' EXHIBIT HHHHH. (1)

Minutes of Newburger, Loeb & Co.'s Partnership Meeting 935

E

Place: Delmonico's
Date: January 28, 196[illegible]
Time: 5:00 p.m.
Present: All general partners except Adolphus Roggenburg and Charles H. Gross.

The meeting was [illegible]d together by Robert L. Newburger who acted as the Moderator. Mr. Newburger outlined the format that would be followed and requested that everyone submit suggestions in regard to future meetings.

He then outlined the functions of various partners as follows:

1. Leo Stern - Mr. Stern will have no specific function but is to be consulted on all major policy decisions and their implementation.

2. Operations - Robert L. Stern
Julius S. Schnall
Richard D. Stern

3. Customer and Registered Representative relations, Insurance, Real Estate, etc. - Andrew M. Newburger
Harold J. Richards
Ned D. Frank (House Counsel)

4. Corporate Finance, Mutual Funds, Block Trading, Underwritings, Research, etc. -
Charles H. Gross
Benjamin F. Peyser
Edward R. Holt
John F. Settel

5. Order Room and Clearance Accounts -
Robert L. Newburger (Coordinator in the above mentioned functions)
George F. Conniff
William A. McGovern
John F. Thistleton

Talk on Operations - Robert L. Stern -

Richard Marshall is the Manager of Operations and Jack Braunstein is in charge of Internal Audit and Control. They have a staff of nine. The P & S Department has been converted, and the other departments will follow. Coding the Stock Record is to be done by temporary personnel. Mr. Stern further reported that because of our growth, it has become necessary to convert from working supervisors to non-working supervisors. A new supervisor of the Margin Department

E

Talk on Operations cont. -
started on January 29 and a new head of the Dividend Department started on February 3. Also on February 3, the new assistant cashier was to start.

Richard D. Stern -
Mr. Stern advised us that he is now our partner in charge of personnel in regard to hiring and firing and that George F. Conniff would remain in charge of personnel records. Mr. Stern has hired Mark Shephard who will be his assistant. He advised us that we were reorganizing our wage salary system especially in connection with overtime. We have also formed a department of reorganization which will handle all tenders and related matters. George F. Conniff will be in charge of this department and will have two employees working with him beginning February 17. In George Plave's absence, Matty will be in charge of the Cage. Tony Marcella and Alan Guskind are the other two assistant cashiers. Mr. Stern also advised us that we were interested in hiring part-time employees at $2.25 an hour and that no experience was necessary.

Andrew M. Newburger -
Mr. Newburger advised us of the new system for the handling of complaints. No Registered Representative is to call any of our employees other than Margin Department employees. All complaints are to be funneled through Andrew M. Newburger, Harold J. Richards and Ned D. Frank. We, in turn, will give them to Richard Marshall for researching.

Harold J. Richards -
He outlined his weekly visits to our branch offices. He went over his agenda. He also advised us that a new communication system was being installed throughout all our offices and that the work would be completed this week.

Sanford Roggenburg -
He spoke briefly on the morale problem in the branch offices and distributed a detailed memorandum.

Benjamin F. Peyser -
He advised us that last year we participated in between 85 and 100 deals but that only two of these originated in Newburger, Loeb & Co. He advised us that we were becoming more merger and acquisition conscience and all partners were urged to try and bring deals to the firm.

John F. Settel -

He discussed the future of our underwriting department and he outlined several areas that we will explore -- Mutual Funds, Institutional Research, Private Placements, Arbitraging, Block Trading, Positioning and Foreign Business.

Ned D. Frank -

He discussed the new discretionary account rule. The legal implications of all partners not having a proper codicil. He also urged the partners to look for more limited capital.

At 6:25 p.m., we adjourned for drinks and dinner.

February 12, 1969
NDF/mb

DEFENDANTS' EXHIBIT IIIII. E 938

	JAN 1970	FEB 1970	YEAR TO DATE
Income - Schedule A	[illegible]	[illegible]	[illegible]
Direct expenses - Schedule B	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
Indirect Expenses:			
Selling - Schedule C	[illegible]	[illegible]	[illegible]
Communications - Schedule D	[illegible]	[illegible]	[illegible]
Occupancy - Schedule E	[illegible]	[illegible]	[illegible]
Administrative and clerical salaries - Schedule F	[illegible]	[illegible]	[illegible]
General and Administrative - Schedule G	[illegible]	[illegible]	[illegible]
Allocation of operations costs			
Total	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
Add - net interest income - Schedule H	[illegible]	[illegible]	[illegible]
Net income from operations	[illegible]	[illegible]	[illegible]
Add - investment income - Schedule J	[illegible]	[illegible]	[illegible]
Net income for the period	[illegible]	[illegible]	[illegible]

DEFENDANTS' EXHIBIT IIIII. E 939

	1970	1971	1972
Schedule A - Income:			
Commissions - NYSE	15 014	18 467	30 468
- ASE	5 049	8 683	17 032
- NOTC	2 442	1 119	3 263
- OTC	3 473	1 390	4 713
	29 128	30 659	55 476
Clearance income	2 358	1 603	3 153
Gross commissions earned from introduced accounts	946	1 962	2 702
Mutual funds	178	1 482	3 120
Underwriting	197 200	—	197 200
Selling groups	4 199	(996)	3 [illegible]
Options	417	61	478
Proxy	1 703	1 [illegible]	2 [illegible]
Sundry	476	420	896
~~Corporate fees~~			
~~Municipal bond trading~~			
Commodity Comm.	259	162	1 301
TENDER AND REDEMPTION INCOME	2 690	1 852	1 [illegible]
	236 600	31 [illegible]	[illegible]
Schedule B - Direct Expenses:			
Salesmen's commissions	147 816	153 [illegible]	[illegible]
Salaries - Traders	1 700	1 [illegible]	[illegible]
Floor brokerage	38 171	2 [illegible]	[illegible]
Clearing House charges -		[illegible]	
Commission fees	4 333	4 [illegible]	[illegible]
Dues and assessments	4 [illegible]	[illegible]	[illegible]
Automatic Computer service	26 887	2 [illegible]	[illegible]
Commissions paid on introduced accounts	[illegible]	[illegible]	[illegible]
Underwriting and syndicate expenses	8 [illegible]	[illegible]	[illegible]
	236 [illegible]	[illegible]	[illegible]

DEFENDANTS' EXHIBIT IIIII.

E

Schedule C - Selling Expenses:

- Advertising
- Sales literature
- Statistical services
- Entertainment and travel
- Research salaries
- Corporate finance expense

Schedule D - Communication Expenses:

- Telephone and telegraph
- Tickers and projectors
- Quotation board and quote machines
- Stationery and supplies
- Postage

Schedule E - Occupancy Expenses:

- Rent and storage charges
- Utilities
- Depreciation
- Repairs and maintenance
- Equipment rental

Schedule F - Administrative and Clerical Salaries:

- Salaries
- Overtime
- Temporary help
- Meals
- Personnel agency fees

DEFENDANTS' EXHIBIT IIIII. E 941

Schedule G - General and Administrative Expenses:

- Partners' salaries
- Manager's compensation
- Employee fringe benefits
- Legal and professional
- Unincorporated business taxes
- Other taxes
- Insurance and protection
- Bad debts
- Training and seminars
- Donations
- Moving expense
- Licenses and fees
- ~~Petty cash~~ Miscellaneous
- Dues and subscriptions
- Stationery and office supplies
- Postage
- Conversion expenses
- Pensions - sales
- Travel and entertainment
- Bank charges (interest)
- exch expense

Schedule H - Interest Income:

Income - customers
- specialists
- stocks ~~loaned~~ Borrowed

Expense - bank loans
- capital
- stocks ~~borrowed~~ LOANED

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Net interest income

INVESTMENT INCOME

Dividend Gain Trading
Net income Bonds trading dept
Gain trading account
Municipal bond trading

ADDITIONAL DEFENDANTS'

FINLEY, KUMBLE TRIAL EXHIBITS

DEFENDANT'S
FINLEY
EXHIBIT
U.S. DIST. COURT
S.D. OF

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT A.

E 942

MEMORANDUM

TO: Robert L. Newburger

FROM: Paul D. Fisher

DATE: December 9, 1970

SUBJECT: Buckley matter

Attached is a memorandum and file on the above subject. Last week, I told Bob Persky to proceed on the basis of asking for $75,000 but willing to settle for $50,000. I don't think Bob has taken any action yet and, if you think a different course of action is appropriate, I think you should call Bob Persky right away.

PDF:/mb
Encl.

DEFENDANT'S
Finley

Co.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT B.

E 943

Risher

B TR

y Berkowitz LPB.

cember 7, 1970

On December 2, 1970, Bob Persky of Finley, Kumble called and indicated that he had discussed the settlement of the Buckley case with the attorneys for Buckley and had extracted the following proposal:

1. $50,000 cash

2. An assignment of Buckley's "churning" cause of action against Gross & Co. to us.

He indicated that he believed that this settlement was a reasonable one since Buckley may be able to hold Newburger, Loeb liable on the "churning" counter-claim due to a heretofore unknown letter of July 18, 1964 by Leo Stern addressed to Buckley which indicates that Buckley's accounts had the same standing as those accounts opened by our own RRs. In addition, Mr. Persky pointed out that if we pursued our claim against Buckley, he would probably declare bankruptcy and the banks to whom Buckley owes money would have claims prior to ours and, therefore, we would probably not be able to get anything from the bankruptcy.

As I indicated to you previously, I believe that we should authorize Mr. Persky to settle the case and the terms indicated above if he is unable to negotiate a larger sum. I would also like to add that I believe Persky has done an excellent and efficient job in this matter, since this case was previously handled by Golenbock and Barell for several years without any satisfactory offer of settlement and Persky has had the case for one month.

You asked me to supply you with some background on the Buckley loss. The facts are as follows:

The Buckley's opened accounts with Charles Jordan of Gross & Co., for whom we were clearing, in mid 1962. They were extremely active accounts and had approximately 1100 trades from the date they were opened in 1962, until August, 1966, when Westec was suspended from trading on the AMEX. In October, 1966, after all other security positions had been liquidated, there was an unsecured debit balance of $289,782 in the combined accounts, with a long position of 11,300 shares of suspended Westec.

On May 15, 1969, Westec trading was resumed and the opening price was 11-3/4. If the 11,300 shares had been liquidated at that time at an average price of $9, it would have to approximately $100,000, resulting in a net loss to us of approximately $100,000, resulting in a net loss to us of approximately $190,000 (I have not included interest from 10/66 to 5/69).

Subsequently, on June 23, 1969, the Buckley's delivered another 2500 shares of Westec from Merrill, Lynch, which if liquidated on the date of receipt, would have reduced their debit balance by an additional $15,000, leaving a net loss as of June 23, 1969 to $175,000.

Assuming that the "churning" claim had some validity on the basis of Leo Stern's letter, a settlement of $50,000 in cash looks very good.

We are carrying the Buckley loss on our books as an unsecured debit of $387,051. Approximately $85,000 of this represents interest, bringing the loss to approximately $300,000. In addition, the $387,000 does not take into account the approximately $30,000 we realized upon the sale of the Buckley's stock, leaving a loss of $280,000. Further, that number does not take into account the fact that had we sold immediately upon Westec's resuming trading, we would have cut our losses by about $89,000 (giving effect to our November 1970 sales at $2) leaving a loss of $190,000.

Larry Berkowitz

LB:fa

DEFENDANT'S FINLEY EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

1 CHASE MANHATTAN PLAZA
NEW YORK, N.Y. 10005

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT C.

E 945

TELEPHONE
AREA CODE 212
422-3100

CABLE ADDRESS
"CONVEYANCE"

TELEX 233760

December 31, 1970

C TD

Newburger, Loeb & Co.
5 Hanover Square
New York, N. Y. 10004

Dear Sirs:

This firm represents Messrs. Irving Lobel, Milton Lobel, and Albert Dworkin who are parties, respectively, to agreements with you providing for the subordination of their accounts with your firm.

You have submitted to us a draft agreement dated December 31, 1970, between Newburger, Loeb & Co., Inc. a Delaware corporation, and Newburger, Loeb & Co., a limited partnership. Subject to the comments below, our clients are willing to execute an agreement substantially in the form submitted to us with such changes as to form and detail as are satisfactory to counsel. We would wish to see the following changes made in the draft agreement:

(a) There should be revisions of pages 21 and 22 substantially along the lines indicated in the annexed revised pages. With regard to the liquidation of subordinated accounts, we would wish to have further discussions regarding the procedures and mechanics involved, including provisions designed to assure that all subordinated accounts will be treated equitably;

(b) Our clients will not become a party to the agreement for all purposes, but will join therein only to the extent necessary. In addition, we will insist upon inclusion of a provision which makes it clear that by execution of these documents our clients are not, except as expressly provided therein, agreeing to waive, release, or discharge any claim or cause of action or right to sue Newburger, Loeb & Co. or any of its partners or employees, past or present, or W. E. Hutton & Co., for any reason whatsoever;

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT C.

E 946

(c) The provision regarding liquidation of the firm in the event of continuing losses should be revised to reflect understandings with regard to the timing of such liquidation, and, further, a definition of net worth should be included under which the opening net worth of the new firm will be approximately $500,000;

(d) A variety of technical and drafting questions should be resolved, so as to assure our clients that there will be no further capital withdrawals from the firm, and that the parties to the contract will not waive closing provisions which are of importance to our clients.

The foregoing summarizes the substance of our comments, but is necessarily subject to a review of the final draft documents and to the final approval of our clients.

Very truly yours,

Kenneth J. Bialkin

KJB:va

BY HAND

9A. Assignment of Subordinated Accounts.

(a) As referred to herein, the "subordinated accounts" are the accounts of Albert Dworkin, Milton Lobel, Irving Lobel, Geza Polaty, Kinko Polaty, Shirley P. Newburger and Betty N. Newborg. At the Closing, the subordinated accounts and the subordination agreements relating thereto will be assigned to the Transferee, the obligations of the Transferee under such subordination agreements will be delegated to and will be assumed by the Transferee, and the subordination agreements covering such accounts will be extended to December 31, 1972. The owners of the "subordinated accounts" listed above, expressly consent to such assignment, assumption and extension. The Transferor agrees that its existing obligations, if any, in relation to the present subordinated accounts will remain unchanged as of the date of this agreement notwithstanding the extension of the maturity dates of such accounts to December 31, 1972, and notwithstanding the assumption of the primary obligations to the owners of such accounts by the Transferee; provided, however, that the obligations, if any, of the Transferor to the owners of such subordinated accounts shall be reduced pro rata and dollar for dollar by the amounts paid to the Transferee on the notes referred to in paragraph 7(h). The subordination agreements will be amended to provide for an interest rate of 4% and that management of Transferee will undertake not to sell the securities covered thereby unless, in management's opinion, Transferee is in danger of (i) insolvency, (ii) violation of the capital requirements as determined according to the rules

of the New York Stock Exchange, or (iii) the owner of the subordinated account has given permission for such a sale. Transferee expressly agrees that prior to the sale of any securities in the subordinated accounts, all securities in accounts of officers designed as capital accounts will have been sold;

(b) There shall be mandatory prepayments of the subordinated accounts upon the following terms: (i) each owner of a subordinated account will receive a prepayment of cash and/or securities (securities being valued at their fair market value) in his subordinated account which is equal to his pro rata share, as among the subordinated lenders, of 25% of all tax refunds collected by the trustee under Section 7(h) of this agreement; (ii) Transferor and Transferee shall take all necessary steps to require W. E. Hutton & Co. to deliver all monies and securities owing or to be owed to Transferor by W. E. Hutton & Co. and each owner of a subordinated account will receive a prepayment of the cash and/or securities (securities being valued on their fair market value) in his subordinated account which is equal to his pro rata share, as among the subordinated lenders, of 30% of all cash and/or securities received (securities being valued at their fair market value) from W. E. Hutton & Co. in excess of $200,000; (iii) Transferee covenants and agrees that, as promptly as possible after the execution of this Agreement in final form, it will cause Transferor to deliver to the holders of the subordinated accounts all dividends, interest and distributions of capital gains held by Transferor at that time and Transferee covenants that all such dividends, interest and distributions of capital shall, upon receipt in the future, be promptly delivered to the owners of the subordinated accounts.

10. Transactions at the Closing.

(a) At the Closing, Transferor will deliver to the Transferee the following:

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT D.

DEFENDANT'S FINLEY EXHIBIT U. S. DIST. COURT S. D. OF N. Y.

D 10

E 9927

WILLKIE FARR & GALLAGHER

1 CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

JOSEPH M. CALLAHAN
CHURCHILL RODGERS
THOMAS N. TARLEAU
COUNSEL

TELEPHONE
AREA CODE 212
422-3100

CABLE ADDRESS
"CONVEYANCE"

TELEX: 233780

[illegible] L. SPERRY
LOUIS A. CRACO
JOSEPH L. BROADWIN
THOMAS L. BRYAN
JAMES S. BROWN, JR.
MICHAEL G. MARKS
STEPHEN B. FLOOD
JAMES B. SITRICK
LOUIS L. HOYNES, JR.
ANTHONY F. PHILLIPS
PHILIP D. CORSI
RAYMOND W. MERRITT
CHARLES I. KINGSON

February 4, 1971

Robert S. Persky, Esq.
Finley, Kumble, Underberg, Persky
& Roth
477 Madison Avenue
New York, New York

re: Newburger Loeb & Co.

Dear Bob:

In preparation for tomorrow's meeting I thought that, assuming we are able to reach some type of consensus, we could also use our time there profitably to pick up a few loose ends of this deal which relate to our clients.

I assume the indemnification agreement which I sent you earlier is satisfactory because I didn't hear anything about it at the last meeting.

The Lobels and Mr. Dworkin note that the value of their securities has increased very substantially since November of last year and that the 3 1/2% figure contained in paragraph 9(b) was based upon that earlier November figure. This may be true of other subordinated accounts. Our clients would not be willing to enter into any arrangement until the amount of equity which they will receive is raised to accord, as to their accounts, with the increase in the value of their securities to the closing date.

[illegible] raised a little earlier the question of legal fees and it is the strong feeling of the Lobels and Mr. Dworkin that our firm's fee should be for the account of the new corporation out of earnings commencing after our clients' accounts are paid out.

The Lobels and Mr. Dworkin have not yet received their fourth quarter interest or, in the case of the Lobels, their dividends, even after repeated calls. We cannot enter into any agreement until this is done.

Without anticipating the outcome of tomorrow's negotiations, I think I can also say that no new paper should be issued

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT D.

E 950

to Mr. Gross (or anyone else) which is senior to our clients' subordinated accounts.

Our best wishes for your continued progress in these negotiations.

With best regards.

Very truly yours,

Charlie

Charles E. Lewis

CEL:ll

cc. Mr. Paul Risher
Mr. Robert Muh
Mr. Irving Lobel
Mr. Milton Lobel
Albert Dworkin, Esq.
Kenneth J. Bialkin, Esq.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT E.

See, Plaintiff's Exhibit 43

AL DEFENDANTS' FINLEY, KUMBLE EXHIBIT I.

E 951

I

PEAT, MARWICK, MITCHELL & CO.
CERTIFIED PUBLIC ACCOUNTANTS
345 PARK AVENUE
NEW YORK, NEW YORK 10022

The Partners
Newburger, Loeb & Co.:

We have examined the statement of financial condition of Newburger, Loeb & Co. as of December 31, 1970. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

As discussed more fully in note 1 to the statement of financial condition, Newburger, Loeb & Co., Inc. (a Delaware corporation) has agreed to acquire the assets and assume certain liabilities of Newburger, Loeb & Co. Also, there are certain contingencies, as discussed in note 8 to the statement of financial condition, of which the final outcome is not presently determinable.

In our opinion, subject to the matters referred to in the preceding paragraph, the accompanying statement of financial condition presents fairly the financial position of Newburger, Loeb & Co. at December 31, 1970, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Also, in our opinion, subject to the matters discussed above, the supplementary data included in Schedule 1 present fairly the information set forth therein.

Peat, Marwick, Mitchell & Co.

March 25, 1971

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT I.
NEWBURGER, LOEB & CO.

E 952

Statement of Financial Condition

December 31, 1970

Assets

Current assets:		
Cash		$ 133,925
Receivable from clearing broker:		
Commissions and other	$ 157,311	
Floor brokerage	10,869	
Firm trading account	306,067	
Omnibus account	132,390	606,637
Receivable from other brokers and dealers and clearing organizations		17,517
Market value of securities in partners', firm and subordinated accounts:		
Federal, State and municipal obligations	156,275	
Corporate securities	1,024,958	1,181,233
Other current assets		70,495
Total current assets		2,009,807
Other assets:		
Memberships in exchanges, at latest sales prices	300,000	
Furniture, fixtures and leasehold improvements, net of depreciation and amortization	595,779	
Securities not readily marketable, at fair value	23,528	
Receivable from former and general partners	32,424	
Subordinated loan receivable from clearing broker (note 3)	379,016	
Receivable from customers - unsecured (note 4)	116,232	
Cost of securities purchased by clearing broker (note 5)	220,662	
Miscellaneous	21,708	
		1,689,349
		$ 3,699,156

Liabilities and Capital

Current liabilities:	
Payable to customers	36,610
Payable to Atlas Realty Corporation	232,950
Accounts payable and accrued expenses	500,662
Market value of securities sold, not yet purchased	116,304
Reserve for contingencies	59,537
Total current liabilities	946,063

Capital and subordinated liabilities (notes 6 and 7):		
Equities in accounts subordinated to claims of general creditors	1,100,478	
Capital (Schedule 1)	1,652,615	
		2,753,093
		$ 3,699,156

See accompanying notes to statement of financial condition.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT I.

NEWBURGER, LOEB & CO. E 953

Notes to Statement of Financial Condition

December 31, 1970

(1) Pursuant to an agreement dated December 31, 1970, Newburger, Loeb & Co., Inc. (a Delaware corporation) agreed to acquire all the assets of Newburger, Loeb & Co., real and personal, tangible and intangible, vested or contingent, of any nature whatsoever, subject only to the liabilities specifically assumed. The corporation agreed to assume the following liabilities:

(A) All liabilities of the partnership shown on the audited statement of financial condition as of December 31, 1970.

(B) All liabilities incurred by the partnership from December 31, 1970 to the closing date in the ordinary course of business.

(C) All liabilities specifically set forth in Schedules A-2, B and C of said agreement which discuss:

1. Lease related liabilities
2. Equipment obligations
3. Other contracts
4. Professional and other services
5. Taxes
6. Miscellaneous
7. Contingent liabilities:
   a. Litigation where the partnership or any of its partners is defendant or where a counterclaim is instituted against any of them.
   b. Potential litigation in which the partnership and/or any of its partners and/or the partnership may be defendant.

The following transactions were to take place at the closing date, February 11 1971:

1. Limited partners:

A. Subordinated convertible notes in the aggregate principal amount of $1,315,494 (said amount being 60% aggregate value of the securities and cash contributed by the limited partners as at November 30, 1970 or December 31, 1970 as to securities still held or the amount realized (without commission) if any such securities were sold between those dates, and unpaid interest to December 31, 1970) were to be issued to the limited partners who were party to said agreement.

B. Series A Convertible Preferred Stock, $100 par value, in the aggregate par value amount of $876,900 (said amount being, with respect to each $100, 40% of the aggregate value of the securities and cash contributed by the limited partners at November 30, 1970 or December 31, 1970 as to securities still held or the amount realized (without commissions), if any, if such securities were sold between those dates, and unpaid interest to December 31, 1970) were to be issued to the limited partners who were party to said agreement.

Two limited partners with an aggregate capital account balance of $150,000 were not party to the agreement.

(Continued)

NEWBURGER, LOEB & CO.

Notes to Statement of Financial Condition, Continued

(1), continued:

2. General partners:

A. Accounts with credit (equity) balances - With respect to each $100 in the capital accounts of former or present 1970 partners at November 30, 1970, exclusive of seven partners, one share of 5% convertible preferred stock, $100 par value, shall be issued. Of the seven partners, four were not party to the agreement.

B. Accounts with debit (deficit) balances - With respect to those former or present 1970 partners whose capital accounts were in deficit at November 30, 1970, the corporation will assume all accounts which have a debit balance of $25,000 or less. For those accounts with a debit balance greater than $25,000, the corporation shall receive personal notes from the individual partners in an amount equal to such debit balance or in certain cases 75% or other percentage of such balance, the remaining debit balances being assumed by the corporation. Certain of these notes were to carry assignments of part or all Federal and state income tax refunds due or to be due to the respective partners. Three partners with deficit balances were not party to the agreement.

3. Subordinated accounts:

A. Non-voting common stock representing 3-1/2% plus 10,100 shares of the Company's issued and outstanding common stock on the date of closing shall be issued pro-rata to the owners of the subordinated accounts at five cents per share.

B. The subordinated accounts and the subordination agreements relating thereto will be assigned to Newburger, Loeb & Co., Inc. and the subordination agreements covering such accounts will be extended to December 31, 1972.

The above-mentioned agreement was signed by all but seven former or present 1970 general partners. All but two limited partners as of December 31, 1970 were party to the agreement and all subordinated lenders as of December 31, 1970 were party to the agreement. The schedule of potential litigation states that the firm may be a defendant with respect to claims of two of the general partners and two of the limited partners who were not party to the agreement for amounts related to their capital accounts and/or rights and obligations under the Restated Articles of Limited Partnership of Newburger, Loeb & Co., dated February 26, 1970, and/or threatened claims arising from or in connection with this agreement and/or damages arising from the "Non-competition" clause in the aforementioned Partnership Agreement.

On February 12, 1971, Newburger, Loeb & Co. ceased to be a member of the New York and American Stock Exchanges and Newburger, Loeb & Co., Inc. was admitted to these exchanges as the successor organization.

(Continued)

NEWBURGER, LOEB & CO.

Notes to Statement of Financial Condition, Continued

(2) At December 31, 1970, the firm was obligated under long-term leases with aggregate annual rentals at that date of approximately $530,470. The leases are for various terms with the longest lease expiring in 1979. $73,610 of these annual rentals were subleased at December 31, 1970 or subsequent thereto.

(3) The firm, at December 31, 1970, has subordinated, to claims of general creditors of its clearing broker, $172,399 cash balances and $206,617 market value of securities at December 31, 1970.

(4) Unsecured customers' accounts at December 31, 1970 were in various stages of litigation. Subsequent thereto, settlements have been made in the amount of $74,938. The firm is of the opinion that the remainder of these accounts will ultimately be realized.

(5) Pursuant to the clearing agreement between the firm and its clearing broker, all securities originally held by the firm were to be delivered to the clearing broker within a specified time period. For those securities which were not delivered in this time period, the clearing broker would purchase securities in the open market and the firm would bear the cost. At December 31, 1970, $220,662 represented the cost of such securities net of a reserve for estimated losses.

(6) At December 31, 1970, capital accounts of general and limited partners contained balances remaining in the accounts for partners who have withdrawn during 1970. Under the terms of the Partnership Agreement in effect at December 31, 1970, "The parties hereto further agree that in the event any such partner ceases to be a partner, ... all such securities, cash, other property or interests therein held at the time such former partner ceased to be a partner shall continue to be treated as partnership property and shall be treated for all purposes as capital contributed by such former partner to the continuing or successor partnership or firm for a period of twelve (12) months after the date on which such former partner ceased to be such, during which time ... no withdrawal of any such securities, cash or other property may be made by such former partner or his heirs or personal representatives."

The distribution of the 1968-1969 "Back Office" losses has been made pursuant to an agreement dated May 7, 1970 which was signed by four of the Executive Partners of the 1967-1968 partnership and by six general partners of the 1969 partnership which represented a majority of its votes.

(7) No effect has been given in this statement to any tax refunds which may be received as a result of a carryback of the current year's operating loss.

(Continued)

E 956

NEWBURGER, LOEB & CO.

Notes to Statement of Financial Condition, Continued

(8) Contingencies:

(A) Litigation:

(1) Various actions are pending against the firm, for which claims aggregating approximately $150,000 have been made. Legal counsel is of the opinion that these claims are without merit.

(2) Various actions and claims have been made against the firm, for which claims aggregating approximately $321,000 have been made. Legal counsel is not yet able to express an opinion with regard to the ultimate liability, if any, that the firm may sustain.

(B) Other:

(1) Legal counsel for a former general partner has stated that the capital account balance of said general partner as shown on Schedule 1 is inaccurate except with the possible exception of the amount in his cash capital account. In addition, he has advised that the former partner has substantial claims against the company which they believe are not reflected in any way upon the books.

Legal counsel for a limited partner has also advised that the limited partner has substantial claims against the company which they believe are not reflected in any way upon the books.

(2) Subsequent to April 26, 1970, the date of the last audited examination, the firm liquidated a major portion of the balances in various security difference and dividend accounts by corrective entries, or repurchase or sale of securities. The firm is of the opinion that future liability, if any, as a result of the action taken above would not be material.

NEWBURGER, LOEB & CO.

Schedule I

Capital

December 31, 1970

Name	Cash and securities capital accounts before distribution: (Debit) Credit net ledger balances in accounts	Market value of securities	Partners' net equity (deficit)	Distributive share of: 1968-1969 "Back-office" losses	Unrealized losses on exchange memberships	1970 operating losses	Total distribution	Partners' net equity (deficit) after distributions
General partners:								
Leo Stern	$ 1,241,379	-	1,241,379	235,401	54,596	277,504	567,501	673,878
Robert L. Stern	620,151	-	620,151	444,650	105,992	538,683	1,089,325	(469,174)
Andrew M. Newburger	325,739	-	325,739	444,650	77,892	314,963	837,505	(511,766)
Robert L. Newburger	881,004	-	881,004	444,650	105,992	538,683	1,089,325	(208,321)
Charles H. Gross	897,603	-	897,603	235,518	103,528	428,996	768,042	129,561
George F. Conniff	25,000	-	25,000	17,842	7,651	22,216	47,709	(22,709)
Edward R. Holt	153,266	-	153,266	42,821	19,271	97,942	160,034	(6,768)
Harold J. Richards	159,258	-	159,258	85,643	31,930	143,244	260,817	(101,559)
Adolphus Roggenburg	200,487	-	200,487	14,274	6,434	32,098	52,806	147,681
Julius S. Schnall	37,372	-	37,372	17,842	8,028	40,808	66,678	(29,306)
John F. Thistleton	-	-	-	3,568	780	1,582	5,930	(5,930)
William A. McGovern	(526)	-	(526)	3,568	2,432	14,741	20,741	(21,267)
Ned D. Frank	136,637	-	136,637	42,821	20,676	88,638	152,135	(15,498)
Sanford Roggenburg	25,000	-	25,000	7,137	3,211	16,323	26,671	(1,671)
John F. Settel	126,949	7,200	134,149	42,821	25,882	139,959	208,662	(74,513)
Richard D. Stern	204,026	2,712	206,738	28,548	16,153	91,615	136,316	70,422
Louis Bracker	25,000	-	25,000	-	3,753	14,307	18,060	6,940
Fred Kayne	50,000	-	50,000	-	7,545	46,439	53,984	(3,984)
Edmund M. Rubin	25,000	-	25,000	-	3,305	26,321	29,626	(4,626)
Jacob Schaefer	12,500	-	12,500	-	1,652	13,160	14,812	(2,312)
Charles S. Sloane	25,000	-	25,000	-	7,545	46,439	53,984	(28,984)
Joseph L. Searles III	-	-	-	-	1,605	5,568	7,173	(7,173)
Robert Therese	50,000	-	50,000	-	6,630	51,541	58,171	(8,171)
	5,220,845	9,912	5,230,757	2,111,754	622,483	2,991,770	5,726,007	(495,250)
Limited partners:								
Estate of Lester M. Newburger	250,000	-	250,000	-	-	-	-	250,000
Estate of Morris Newburger	703,093	-	703,093	176,759	-	-	176,759	526,334
Gerald M. Frank	387,292	8,750	396,042	-	-	-	-	396,042
Willard S. Irle	103,459	-	103,459	-	-	-	-	103,459
Jeanne G. Donoghue	75,000	-	75,000	-	-	-	-	75,000
Mabel Bleich	75,000	-	75,000	-	-	-	-	75,000
Jacob Wachs	61,648	-	61,648	-	-	-	-	61,648
Saul A. Brown	61,648	-	61,648	-	-	-	-	61,648
Benjamin F. Peyser	76,357	-	76,357	57,095	12,473	25,308	94,876	(18,519)
Phillip Shulman	230,718	-	230,718	-	-	-	-	230,718
Joseph W. Quarte	386,535	-	386,535	-	-	-	-	386,535
	2,410,750	8,750	2,419,500	233,854	12,473	25,308	271,635	2,147,865
Total	$ 7,631,595	18,662	7,650,257	2,345,608	634,956	3,017,078	5,997,642	1,652,615

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT I.

E 957

DEFENDANTS' FINLEY,
KUMBLE EXHIBIT J.

E 958

DEFENDANT'S
FINLEY
EXHIBIT
U. S. DIST. COURT
S. DIST. OF N.Y.

J 78

L

Loeb & Co.

SERVICE SINCE 1899

ORK, N.Y. 10004 (212) 944-6300

Branch Offices

4 East 28th Street at 5th Avenue
525 Seventh Avenue at 38th Street
57 West 57th Street at 6th Avenue
1900 Ave. of the Stars, Los Angeles, Calif.
2091 Broadway at 72nd Street
901 Madison Avenue at 74th Street
920 Flatbush Ave. at Church Ave., Bklyn.
110 N Doheny Dr., Beverly Hills, Calif.

...e • American Stock Exchange • Chicago Board of Trade • New York Cotton Exchange • Commodity Exchange • New York Cocoa Exchange

MINUTES OF THE EXECUTIVE COMMITTEE MEETING of OCTOBER 9, 1970

The Executive Committee Meeting commenced at 10:45 A.M. with the following in attendance:

Messrs:

*Ned D. Frank
*Fred Kayne
*Robert Newburger
*Robert Stern
*Robert Therese
Andrew Newburger (alternate for J. Settel)
Robert Persky (counsel)

* voting member

It was explained to the Committee that the purpose of Mr. Persky's presence at this meeting was to answer any questions which might arise with regard to partnership agreements or any other questions pertinent to the business of the firm and/or the partners.

Fred Kayne opened the meeting by requesting a review of the agenda.

1. Charles Gross: Mr. Gross resigned, effective September 30, 1970. The New York Stock Exchange and The American Stock Exchange have asked for clearance and Heine & Co. has requested a release for Mr. Gross.

It is the opinion of counsel that an amendment to the agreement is required in order to confirm Mr. Gross's release from the non-competitive clause. Mr. Kayne took a preliminary survey of the partners present which indicated that an amendment could not be approved at this time.

Ned Frank is responsible for drafting a reply to NYSE, AMEX and Heine.

2. Salaries: A vote was taken with regard to the approval of the proposed new salary schedule:

In favor: Messrs: N. Frank, F. Kayne, R. Therese
Opposed: Messrs: R. Newburger, R. Stern
Results: 3:2 in favor of the new salary schedule.

This will be retroactive to October 1, 1970.

3. Tax Assignments: Fred Kayne as Managing Partner, having a fiduciary relationship with Newburger, Loeb & Co. and to the partnership as a whole has exerted every effort to have those partners with deficit accounts to either bring their capital account out of deficit or sign the tax assignments. It is Mr. Kayne's feeling that in six weeks, he has done all he can to explain in detail the financial condition of the firm, the problems of not having this capital in the firm, etc. He has personally spoken with Charles Sloane and John Settel who will have their tax assignments duly executed and in the hands of Fred Kayne next week.

Robert Stern has no objection to assessing his tax return in some fashion and is prepared to discuss this in the presence of counsel next Tuesday. He is not aware of anyone in deficit position who has not put his tax refunds back into the firm.

Ned Frank has been advised by NYSE and has in the past advised members in the firm in deficit that this is a common thing on Wall Street. The Exchange has assisted firms in securing bank loans based on tax returns and accelerate returns so many firms have been prevented from going out of business through one of these procedures. To Mr. Frank's knowledge, there has been no attempt to borrow money or accelerate any of the substantial tax refunds these individuals have coming to them.

One possible remedy should a deficit partner fail to bring his capital up and refuse to sign a tax assignment: the matter could be brought to the Exchange Arbitration Board as Firm vs. Partner in Deficit.

Fred Kayne has asked Bob Persky to complete the necessary research for alternative actions.

The non-executive partners have not been approached regarding tax assignments as yet. Mr. Kayne believes that it would be inappropriate to do so until the executive partners have fulfilled their requirements.

ADDITIONAL DEFENDANTS'
FINLEY, KUMBLE EXHIBIT J.

E 960

The 1968-69 partners will draft a proposal for an equitable handling of expenses/profit regarding the back office losses of that period.

It was unanimously agreed to raise the Risher/Muh retainer from $5,000 to $8,000 per month.

A vote was taken with regard to expanding the California office by signing a lease for the entire 23rd floor of 1900 Avenue of the Stars for a period of fifteen years:

In favor: Messrs: N. Frank, F. Kayne, R. Therese
Opposed: Mr. R. Stern
Abstained: Mr. R. Newburger
Results: 3:1:1 in favor of the expansion of the California office space.

It was confirmed that the 38th Street office would close officially on the 23rd of October.

The next Executive Committee Meeting will be held in Fred Kayne's office at five o'clock on the 19th of October.

The meeting was adjourned at 1:40 P.M.

EFENDANT'S
FINLEY
EXHIBIT
DIST. COURT
D. OF N. Y.

FENDANTS' FINLEY, KUMBLE EXHIBIT K. E 961

K

Loeb & Co.

ERVICE SINCE 1899

, N.Y. 10004 (212) 944-6300

Branch Offices

4 East 28th Street at 5th Avenue
525 Seventh Avenue at 38th Street
57 West 57th Street at 6th Avenue
1900 Ave. of the Stars, Los Angeles, Calif.
2091 Broadway at 72nd Street
931 Madison Avenue at 74th Street
920 Flatbush Ave. at Church Ave., Brklyn.
110 N Doheny Dr., Beverly Hills, Calif.

an Stock Exchange • Chicago Board of Trade • New York Cotton Exchange • Commodity Exchange • New York Cocoa Exchange

MINUTES OF THE EXECUTIVE COMMITTEE MEETING OF OCTOBER 16, 1970

The Executive Committee Meeting commenced at 12:20 p.m. with the following in attendance:

Messrs:
Ned D. Frank
Fred Kayne
* Andrew Newburger
Robert Newburger
John Settel
Robert Stern
Robert Therese

* Alternate Member

Andrew Newburger, Robert Newburger and Robert Stern recorded an objection to the lack of notice given for the Executive Committee Meeting.

Fred Kayne noted that Robert Persky is not present at todays meeting because of Robert Newburger's request.

Fred Kayne requested a review of the agenda.

Old Business:

1. Tax assignments and deficits: Fred Kayne reported that Robert Persky is still investigating the course of action that the partners should take regarding tax assignments and deficits. Mr. Persky will probably have his recommendation at the next Executive Committee Meeting.

2. Louis Bracker: An arbitration against Louis Bracker is to be instituted.

3. Back-office Losses: Fred Kayne proposed that Robert Therese be responsible for cash flow and recovery of 1970 conversion problems. Ned

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT K.

E 962

New Business

1. Proposed Basketball Team Sale: John Settel distributed attached memo outlining the terms of the proposed sale.

Fred Kayne presented a resolution to the committee:

That the Executive Committee unanimously ratify all the actions and negotiations and documents related to the basketball team; and that the Executive Committee empowers John Settel to proceed and close the deal with Paul Snyder and make any necessary revisions and negotiations as he sees fit.

A vote was taken resulting in a unanimous yes.

2. Replacement for ~~Charles Gross~~ on the Executive Committee: Fred Kayne made a motion that Charles Sloane be appointed to the Executive Committee ~~as the seventh member on a permanent basis.~~ Motion seconded by Robert Therese.

Robert Newburger suggested that Andrew Newburger be added to the Executive Committee.

Ned Frank made a motion to end discussion and to vote on the motion. Robert Therese seconded the motion.

In favor: Messrs. N. Frank, F. Kayne, J. Settel, R. Therese
Opposed: Messrs. Robert Newburger, Robert Stern

Motion defeated as unanimous vote required on this motion.

3. New Branch Manager - Main Boardroom: Fred Kayne announced that Stanley Slobodien has been employed in the above position.

4. Charles Gross as a Registered Representative of Newburger, Loeb: The Executive Committee agreed to allow Charles Gross to be a Registered Representative for Newburger, Loeb.

5. Interest on excess capital: Ned Frank presented a memorandum to the Executive Committee in regard to interest on excess capital. A motion is to be presented on this at the next Executive Committee Meeting.

6. Other Matters

a. Fred Kayne distributed a balance sheet as at September 25, 1970. A copy is to be forwarded to Robert Newburger's lawyer.

b. John Settel moved that Fred Kayne be made Chairman of the Executive Committee in addition to his duties as Managing Partner. Motion

seconded by Robert Therese .

In favor:	Messrs: N. Frank, F. Kayne, J. Settel, R. Therese
Opposed:	Mr. Robert Newburger
Abstained:	Mr. Robert Stern
Results:	4:1:1 in favor

Fred Kayne is the new Chairman of the Executive Committee.

c. Robert Therese recommended the seating arrangement of the 8th floor at 5 Hanover Square be reviewed by a committee. Fred Kayne appointed a committee consisting of Robert Newburger, Robert Therese and John Settel to review the seating arrangement.

d. At Andrew Newburger's request, Fred Kayne reviewed the office space at Century City.

e. The Option Department is to be the responsibility of the Board Room Manager.

Meeting adjourned.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT K.

ADDENDUM TO THE

EXECUTIVE COMMITTEE MEETING MINUTES

OF OCTOBER 16, 1970

E 964

Addition to page 1, paragraph 3 regarding Robert Persky's absence at todays meeting, Robert Newburger stated for the record that the reason for his request was that he felt it was a needless expenditure of money.

Addition to topic 2, under New Business, page 2, as last paragraph: Mr. Robert Newburger stated for the record that he was not in actuality voting against Charles Sloane, whose ability he certainly does not denigrate; but rather, was voting that the committee not be expanded at this time and that if it be expanded, that Andrew Newburger be returned to the Committee.

Addition to topic 4, under new business: The Executive Committee agreed to allow Charles Gross to be a Registered Representative for Newburger, Loeb, providing that he sign a proper document assuring that the contractual rights of Newburger, Loeb in relation to Charles Gross would not be prejudiced.

DEFENDANT'S
FINLEY
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
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DEFENDANTS FINLEY,
KUMBLE EXHIBIT L.

EXECUTIVE COMMITTEE MEETING
MINUTES
November 5-6, 1970

E 965

5:10 P.M., November 5, 1970 with the following in attendance:

Fred Kayne
Robert Persky (counsel)
Andrew Newburger (alternate)
Robert Newburger
John F. Settel
Leo Stern (alternate)
Robert Stern
Robert Therese

I. Robert Newburger made a motion that the minutes of the October 27, 1970 meeting be approved. The motion was seconded by Robert Stern and was unanimously passed.

A discussions was entered into at this point with regard to resignations which had been submitted in October. Fred Kayne recessed the meeting until noon Friday.

The meeting reconvened at 12:30, P.M., Friday, with the same individuals in attendance. The following resolution was voted upon:

"Resolved that the Executive Committee hereby acknowledges that the resignation of Ned Frank was submitted on October 6, 1970, and the resignations of Fred Kayne, and Charles Sloane were submitted on October 8, 1970, and that the effective date set forth in each of the said resignations was November 30, 1970."

This was unanimously approved and the two alternates had no objections.

II. Old Business

(a) Bob Persky's report was postponed.
(b) There are several bills which remain unsettled at this point with regard to the basketball venture. It is the unanimous feeling of the Committee that the Peter J. Crotty Bill be negotiated and a settlement reached. In the event a settlement cannot be reached, it is understood there may be litigation. This feeling is extended to include the Lipkowitz, Plant, Salberry bill as well as the Simonoff, Pyser bill which had been discussed at the previous meeting.
(c) Discussions are continuing and the proposed resolutions have been written in response to these discussions.
(d) Nothing new to report.
(e) Included in (b) above.
(f) Nothing new to report.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT L.

E 966

III. New Business
(a) Discussed previously.
(b) The Cash Flow is critical and various approaches to improving the situation are being discussed and investigated.
(c) Resolution - the proposed resolution was distributed and discussed. Further thought needs to be given to the resolution prior to ratification.

IV. The meeting was adjourned at 2:30 P.M.

Minutes prepared and submitted by:

F. L. Arlen

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT L.

E 967

AGENDA

EXECUTIVE COMMITTEE MEETING

November 5, 1970

I. Approve minutes of October 27, 1970 meeting.

II. Old Business

(a) Tax Assignments & Deficits - Bob Persky

(b) Basketball - remaining bills

(c) Morris Newburger Estate Report

(d) Simonoff Pyser Settlement - Ned Frank

(e) Lipkowitz, Plant, Salbery Bill

(f) Ben Pyser Settlement

III. New Business

(a) Ned Frank Resignation

(b) Cash Flow

(c) Resolution

(d) Other Matters

IV. Adjourn

ADDITIONAL
DEFENDANTS FINLEY,
KUMBLE EXHIBIT M.

Finley
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

28-F
E 968

MXR

Eric Cim - They met with Dilger - stuff straight - were told that NL would be suspended unless certain stipulations were met.

Parsky - Submitted copies of Ag & Letter.

For liquidation receivable assets of money & less than 10% or dealer. So will not qualify for liquidation as taxable matter

Tax reforms - Spring of Income 1971 - they do not count as capital. Even though accounted as book will not qualify capital

Merger equivalent to liquidation

Conversation with Dilger - If limited partnership capital stayed in - that would constitute compliance.

Paul Packer - Packer Mun. Co. Mgt. Consulting Co. Brought in by Wayne 9% after & NL. Asked by Eric Cim to become chief operating officer of NL & 1 other one in Cookeville capacity. They accepted. Submitted 4 page memo. - we objected that (the explanation of restricted term is inaccurate - he should substitute "holder of unregistered")

Restricted Fees were 5% granted - agreed to 3% in final Exchange unit

Parsky to keep public was prepared which should go very far

Parsky

ADDITIONAL DEFENDANTS' FINLEY,
KUMBLE EXHIBIT M.

E 969

Enlarge that - Maybe necessary to write off another $30,000
or $ assessed accordingly

4 long term leases -

250 Park - ~~5~~ 2 years
7 and 4 - 3 years
5 Thurman - 5
LA 10

~~Atlantic Theatre~~ -

Hecht - have ought to be some interest - Finley wants to take
over non-liquid asset and Buckley, Cotton
[illegible] packers take over liquid asset
as for purposes of liquidation.

Finley - If may keep on - must be kept on for one year
Hecht - Between 1 m to 14 mil loss + Hecht gathers ~~cash~~ of
liquidation
Finley - Packers & stay [illegible] - If keep [illegible] Buckley demands ~~[illegible]~~ [illegible] in
one, I'm removed from keep, becomes a liability.

③ MTR must realize [illegible] long

② Make

① Make must realizing [illegible] &c.
Must realize operation
Assume Lloyd must keep

FINLEY
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

N 10

E 970

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT N.

NEWBURGER, LOEB & CO.

BALANCE SHEET

As at November 27, 1970

ASSETS

CURRENT ASSETS		
Cash in Bank, on hand and deposits with clearing organizations		$ 328,077
Receivable from brokers & dealers		188,421
Commissions Receivable - W. E. Hutton		80,374
Floor Brokerage		15,222
Receivable from customers unsecured (Net of Reserves of $585,840)		187,000
Market value of securities in partners, firm and subordinated accounts		
- Federal, State & Municipal Obligations	$	
- Corporate Securities		2,553,547
Receivable from Insurance Company		80,000
Prepaid Expenses		
- Prepaid Insurance	21,400	
- Prepaid Conversion Cost	56,347	
- Prepaid Taxes	10,629	88,376
Other Current Assets		
- Receivable from NYSE and ASE	8,491	
- Good Faith Deposits	24,700	
- Receivable Rosen & Co.	7,976	41,167
Total Current Assets		3,562,184
OTHER ASSETS		
Memberships in Exchange		260,000
Furniture & Fixtures, net of depreciation		583,140
Investment and Advances to Subsidiary Corporations		
- N/L Holding Co.	38,500	
- N/L Sports Enterprises, Inc. ($32,123 fully reserved)		38,500
MISCELLANEOUS		
Dividend Receivable Non-Current		57,211
Employee Loans		29,093
Rent Deposit		5,970
James Anthony Liquidation ($11,148 fully reserved)		
Receivable from Partners		63,799
Other		7,155
TOTAL ASSETS		$4,607,057

The accompanying notes to financial statements are an integral part of this balance sheet.

Pltf Ex 34-7 Lowy
4/12/74 DT

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT N.

E 971

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT N.

NEWBURGER, LOEB & CO.

BALANCE SHEET
As at November 27, 1970

LIABILITIES AND CAPITAL

CURRENT LIABILITIES		
W. E. Hutton Loans		
— Borrowed Funds	$673,892	
— Stock Loans	900,000	$1,573,892
Payables to Brokers and Dealers		38,635
Atlas Realty Liability		211,654
Accounts Payable and Accrued Expenses		
- Partners' Salaries	25,433	
- Commissions to Salesmen	124,028	
- Interest on capital	3,000	
- Dividends	68,175	
- Miscellaneous Accruals and Expenses	150,523	371,159
RESERVE FOR LOSS IN NEW-LOEB SPORTS		67,877
CAPITAL & SUBORDINATED DEBENTURES		
Equities in accounts subordinated to claims of general creditors		
Capital		
- General Partners		
- Limited Partners		2,343,840
TOTAL LIABILITIES AND CAPITAL		$4,607,057

The accompanying notes to financial statements are an integral part of this balance sheet.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT N.

E 972

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT N.

NEWBURGER, LOEB & CO.

Notes to Financial Statements
As at November 27, 1970

1. Firm Securities

On November 28, 1970, firm securities aggregating approximately $_____ were sold. The effect of these transactions will be reflected in the December, 1970, financial statements.

2. Unsecured Receivables

In the opinion of in-house counsel for Newburger, Loeb & Co. approximately $187,000 is the maximum amount recoverable from unsecured receivables and accordingly the balance sheet reflects this amount. Approximately $123,000 additional may be recoverable if insurance claims made by N L & Co. are sustained. There is little probability that such additional recovery will be effected.

In view of the above, the financial statements reflect a reserve against uncollectible unsecured receivables of $591,846. Of this reserve, $433,042 had been recognized prior to October 30, 1970. During November, 1970, an extraordinary charge of $158,804 was recorded to reserve fully for anticipated losses.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT N.

3. Memberships

A reserve has been established against the value of New York and American Exchange seats in the amount of $198,806. The effect of this entry is to state the two stock exchange seats at the most recent sale prices relative to the balance sheet date as follows:

American Stock Exchange Sale of November 25, 1970	$105,000
New York Stock Exchange Sale of November 27, 1970	155,000
	$260,000

Subsequent to the balance sheet date sales of exchange seats were effected as follows:

American Stock Exchange Sale of November 30, 1970	$ 95,000
New York Stock Exchange Sale of December 9, 1970	200,000
	$295,000

4. James Anthony Liquidation

In the opinion of in-house counsel for N L & Co., no recovery is anticipated from James Anthony. N L & Co. has filed a claim in bankruptcy for the recovery of amounts due them from James Anthony. In view of the probability that no amounts will be collected, this account has been totally reserved in the financial statements by an extraordinary income charge of $11,148 recorded in November.

5. Non-current Liabilities

The balance sheet includes dividends payable non-current of $_____. Some portion of this may be current. This analysis is in process.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT N.

6. Settlement of Lease

An extraordinary charge for $411,654 has been recognized in November, 1970, representing obligations incurred by N L & Co. pursuant to an agreement made October 30, 1970, between N L & Co. and New York Plaza Building Company

The $411,654 extraordinary charge reflects a $200,000 payment made in November, 1970, and the minimum liability for $211,654 which N L & Co. has contracted to pay in future periods.

Under the terms of the agreement, N L & Co. will pay either $211,654 on January 1, 1971, or an aggregate of $232,949, in essentially equal monthly installments, commencing January 1, 1971, and ending May 1, 1972.

Newburger, Loeb & Co. has until December 23, 1970, to elect one of the two alternate payment methods.

7. Reserve for New-Loeb Sports

Reserves aggregating $100,000 have been established to recognize the anticipated loss on the sale of the Buffalo Braves basketball team. The reserve has been segregated between a reserve for advances to New-Loeb Sports of $32,123 and an additional reserve for $67,877 shown as Other Liabilities in the balance sheet.

8. Unrecorded Liabilities

The above figures do not reflect stock dividends with long market value of $_____ and a short market value of $_____. They also do not reflect lost securities with a market value of $_____ or shortages of approximately $_____ at W. E. Hutton.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT N.

9. Contingent Liabilities

Under the terms of the lease for the 5 Hanover Square space, Newburger, Loeb & Co. is obligated to pay certain increases in rent under escalation clauses in the lease agreement. At the present time N L & Co. is negotiating with the landlord to determine the amount of such escalation. Although no agreement has been reached, N L & Co. has offered to pay $20,000 in settlement. No recognition of this contingent liability has been made in the financial statements.

The following are contingent liabilities representing disputed bills:

Simonoff & Pizer	$23,000
Golenbock and Barell	$14,400

It is not known at this time how much, if any, will be paid to these parties. Accordingly, no recognition of liability has been made in these financial statements.

Other contingent liabilities and liabilities for long-term leases are not reflected in the financial statements.

DEFENDANTS' FINLEY EXHIBIT U. S. DIST. COURT S. D. OF N. Y.

'IONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT O.

E 976

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NEWBURGER, LOEB & CO.
BALANCE SHEET
October 31, 1970

ASSETS		
CURRENT ASSETS		
Cash in Bank, on hand and deposits with clearing organizations		$ 1,155,752.
Receivable from brokers & dealers		346,583.
Receivable from customers secured	$265,287.	
Receivable from customers unsecured	778,846.	
Reserve for uncollectable accounts	(433,042)	611,091.
Market value of securities in partners, firm and subordinated accounts		
Federal, State & Municipal Obligations	593,075.	
Corporate Securities	1,929,219.	2,522,294.
Prepaid Expenses		
Prepaid Insurance	105,300.	
Prepaid Conversion Cost	60,647.	
Other prepaid items	10,635.	176,582.
Other Current Assets		
Dividend Receivable Current	-0-	
Good Faith Deposits	16,300.	
Receivable Rosen & Co.	15,168.	
Receivable from Mutual Fund Dept.	36,798.	68,266.
OTHER ASSETS		
Memberships in Exchange (market value $285,000.)	458,806.	
Furniture & Fixtures, net of depreciation	584,777.	
Investment and advances to subsidiary corporations: New-Loeb Sports Enterprises, Inc.	295,623.	
N/L Holding Co.	38,500.	1,377,706.

MISCELLANEOUS		
Dividend Receivable Non-Current	$ 54,226.	
Employee Loans	9,184.	
Rent Deposit	5,020.	
James Anthony Liquidation	11,148.	
Interest Receivable Partners	24,943.	
Other	8,215.	$ 112,736.
		$6,371,010.
Liabilities & Capital		
Current Liabilities:		
Money borrowed from W.E. Hutton	1,584,961.	
Payables to brokers and dealers	947,205.	
Payable to customers	131,699.	2,663,865.
Accounts Payable and Accrued Expenses		
Partners Salaries	31,570	
Commissions to Salesmen	177,000.	
Interest to banks	35,000.	
Interest on capital	23,000.	
Dividends	122,942.	
Miscellaneous Accruals & Expenses	146,976	536,488.
Capital & Subordinated Debentures		
Equities in accounts subordinated to claims of general creditors	-783,060.	
Capital		
General Partners	436,853.	
Limited Parnters	1,950,744.	3,170,657.
		$6,371,010.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT O.

E 978

NOTES:

1. The above figures do not reflect stock dividends with long market value of and a short market value of . They also do not reflect lost securities with a market value of $58,000. or shortages of approximately $135,000. at W.E. Hutton.

2. Contingent Liabilities and Liabilities for long term leases are not reflected in the above figures.

DEFENDANTS' FINLEY EXHIBIT U. S. DIST. COURT S. D. OF N. Y.

TIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT P.

Preliminary Pro-Forma

NEWBURGER, LOEB & CO., INC.

BALANCE SHEET January 25, 1971

(Based on November 27, 1970 - Balance Sheet of Newburger, Loeb & Co.)

E 979

P

28-B

ASSETS

CURRENT ASSETS		
Cash in Bank, on hand and deposits with clearing organizations		$ 373,955
Receivable from brokers & dealers		188,421
Commissions Receivable - W. E. Hutton		80,374
Floor Brokerage		15,222
Receivable from customers unsecured (Net of Reserves of $585,840)		187,000
Market Value of securities in partners, firm and subordinated accounts		
- Federal, State & Municipal Obligations		
- Corporate Securities		3,453,547
Receivable from Insurance Company		80,000
Prepaid Expenses		
- Prepaid Insurance	$21,400	
- Prepaid Conversion Cost	56,347	
- Prepaid Taxes	10,629	88,376
Other Current Assets		
- Receivable from NYSE and ASE	8,491	
- Good Faith Deposits	24,700	
- Receivable Rosen & Co.	7,976	41,167
Receivable from W. E. Hutton (12/31/71)		500,000
		$5,008,062
OTHER ASSETS		
Memberships in Exchange		260,000
Furniture & Fixtures, net of depreciation		583,140
Investment and Advances to Subsidiary Corporations		
- N/L Holding Co.	38,500	
- N/L Sports Enterprises, Inc. ($32,123 fully reserved)		38,500
Receivable from General Partners		900,000
MISCELLANEOUS		
Dividend Receivable Non-Current		57,211
Employee Loans		29,098
Rent Deposit		5,970
James Anthony Liquidation ($11,148 fully reserved)		
Receivable from Partners		63,799
Other		7,155
TOTAL ASSETS		$6,952,935

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT P.

E 980

Preliminary Pro-Forma
NEWBURGER, LOEB & CO., INC.
BALANCE SHEET January 25, 1971
(Based on November 27, 1970
Balance Sheet of Newburger, Loeb & Co.)

LIABILITIES AND CAPITAL

CURRENT LIABILITIES		
W. E. Hutton Loans*		
- Borrowed Funds	$ 673,892	
- Stock Loans	900,000	$1,573,892*
Payables to Brokers and Dealers		38,635
Atlas Realty Liability		211,654
Accounts Payable and Accrued Expenses		
- Partners' Salaries	25,433	
- Commissions to Salesmen	124,028	
- Interest on capital	3,000	
- Dividends	68,175	
- Miscellaneous Accruals and Expenses	150,523	371,159
RESERVE FOR LOSS IN NEW-LOEB SPORTS		67,877
CAPITALIZATION		
Convertible Debentures Due December 31, 1973 - December 31, 1975	2,084,031	
Subordinated Accounts Due December 31, 1972	995,620	
Senior Subordinated Account Due December 31, 1973	900,000	3,979,651
8190 shares of $100 par Convertible Preferred Stock		819,000
1,085,000 of 1¢ par Common Stock		10,850
Paid In Surplus		35,028
Retained Earnings		(154,811)
		$6,952,935

*These loans were paid in full in early December.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT S.

E 981

- 24 pictures, most of them, were exhibited on 11/30/70

Clerk Draws EBT

date

Get copy of picture of Jones & Mabel on plains year.

12-22-90

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT S.

25-E 982

Bialleen

Will be Part of Subordinated Lenders (Labels & all Dunkin) Counsel, Los pantuns.

Boston

~~Oct~~

- Results are all estimates.

- Subordinated Lenders' position -

Their investments made on basis of stmts of materials re 50, Omissions and inaccuracies were material. They regard very grave questions as personally responsible for repayment in full to them. To the extent that Ltd. pleas had not contributed to full extent of his agreement. To the extent that general & Ltd. partners either were date of loans, pltffs. can return funds and recover.

who made these misrepresentations?

They doubt that pltffs. is insolvent.

They are not willing to accept debentures or have their security released out. They want adequate assurance of repayment.

Willing to: ① Do nothing and extend to their right on 5/15, the maturity date for Label and 4/15 for Dunkin.

② Continue subordination agmt w/ new firm for 2 years from today provided reasonable assurances against liquidation of their amount except to meet required requirements of agreed by NYX and no other attempts to raise capital.

They would regard any passed liquidation as a covenant

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT S.

E 983

Conditions for entering:

(1) Joint & several undertaking of petitioners to ultimate repeal of Glen amdt (Acceptance of penal legislation).

(2) To collateralize undertaking - assignment, pledge & transfer thru of tax refunds and use of Hamilton loan. To be returned if petitioners claim.

(3) Entitled to some share of equity of new firm. Conversion feature is unacceptable.

(4) Ntl: various notices of limited partners have been given and AR says Ltd. partners are creditors. But Wilbert Fox says myriads of partners can take as mere Ltd. partners instead of substituted annuities. Dan Gainey says agreement is open to all and binding on individual banks.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT S.

— Reeb Small Stahl
0 23,111
DC Cir 4/23/70

Legal
Fees
excluded under

— The fundamental problem

Corporate Control subjects - fruits - retired undistributed corporate
present stage & the present assignment at this stage
~~present rights at~~
maintain present legal ~~picture~~ rights vis a vis
stage of the criteria.

50%
25% of tax refunds - 30% of WEH over $200,000

Proposal -
- Counter proposal 20% of that issues in Tax w Erhlich &
Tax Refunds
Nam -

Proposal - H/w I get to negotiate bankruptcy settlement. Then
wants 50% of the refunds. Risler & Mack
won't go along w/ 50%.

Concluded
on express
agreement by
existing w L stage
that the stage
attaches to
respective
undistributed corporate
will remain the
same as they usually
exist w/ the right

Seeds that the retained
earnings would be
distributed to
the corporate
level from time

retained | negotiate date of assignment | entitled to corp
not with standing assignment | entitled to corp
& its assumption by corp.

ADDITIONAL DEFENDANTS' FINLEY KUMBLE EXHIBIT S.

E 985

Agreement – Dunlap – credit for refund may
proper vertebrae on liquidation / recapture
- only to meet a capital call
- to avoid insolvency.

~~but Ritter & Nash~~ say
Andy's treatment - 75%.

Executive committee extends to ~~the~~ accounts.
To the extent refund comes in

Re: equity: Ritter + Nash have agreed
to 3½% equity participation free & clear.
42,000 shares
pro rata to subscribed lenders.

Ltd partners

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT S.

E 986

Ltd partners to get better arrangement wh
3½%
25,000

I'm copying subject to my client's approval and am sending it to the Sopr.

Clerk: Trans. p. 25

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT S. E 987

Salary $35,000 + commissions as negotiated by parties
Expenses not to exceed 16%

Agreement to be recast so corp. to be formed is not owned by assets.

New Keller Corp formed to assume this corp liab as of 12/31.
Date of this agreement — 12/31.

Have structured tax refund so that
$900,000 of tax refunds is asset of corp.

In 1970, 1968 & 1969 book office losses of
$2.3 million realized in 1970. (written off)
who else to stock, where did I get it

DID Jean & Mabel give notes / withdrawals?
Are they in capital deficit?

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT S.

E 988

Except very little wet

Empire very little
wet plus aground

DEFENDANTS
FINLEY
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
T

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT T.

28-L

E 989

4/20/71 | 16 people

discussion of K on plan of reorganization - relation of fringe to initial

Bank - Exchange has latitude with (but 5 will oppose merger over what amount of loans + deposits

Brandt - Chicago wants liquidity - prepared to sell entire Chicago + realize gain - Chicago will oppose the deal + Chicago wants the Jones will merge for mine CG's to sell equivalent prepared stock to

Others - CG's willing for left to treat them the same as all parties

Value of CG's own - impute above - their problem to give it if CG does nothing to hurt them as long as they own it

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT U. 29-E

Stroock & Stroock & Lavan
61 Broadway
New York, New York 10006

TELEPHONE (212) 425-5200
TELEX STROOCK 620367
CABLE ADDRESS "PLASTROOCK"

ROBERT B ANDERSON
HERMAN BADILLO
OF COUNSEL

WASHINGTON, D.C. 20036
1100 CONNECTICUT AVENUE, N.W.
TELEPHONE (202) 293-1990
CABLE ADDRESS
PLASTROOCK-WASHINGTON, D.C.

PARIS 8e, FRANCE
18-20 PLACE DE LA MADELEINE
TELEPHONE 742-23-33
CABLE ADDRESS
PLASTROOCK-PARIS

DAVID LUBART
JEROME A. MANNING
ERWIN MILLIMET
CHARLES G. MOERDLER
WILLIAM A. PERLMUTH
MAXWELL M. RABB
SEYMOUR RABINOWITZ
HOWARD SCHNEIDER
MILTON N. SCOFIELD
DAVID SHER
JULIUS H. SHERMAN
ROBERT D. STEEFEL
RONALD J. STEIN
ALAN M. STROOCK
CHARLES R. TAINE
WILLIAM J. VANDEN HEUVEL
ARTHUR WITTENSTEIN

February 9, 1971

Arthur C. Silverman, Esq.
Golenbock & Barell
60 East 42nd Street
New York, New York 10017

Dear Arthur:

Enclosed is form of power of attorney which you should have signed and acknowledged by Mabel Bleich and have it available at the closing on Thursday.

I also enclose to you herewith suggested form of indemnity letter that we should require Newburger, Loeb & Co., Inc. to execute at the closing. I dictated this over the phone and have not had a chance to read it. I will welcome your comments or suggestions.

Sincerely,

Bob Steefel (FK)

RDS/fk
Encs.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT U.

E 991

February 9, 1971

Donald L. Newborg, George B. Levy,
Gerald N. Frank, Willard S. Irle,
Mabel Bleich, Jack Wachs, Saul A.
Brown, Joseph W. Quarte, and
Philip Shulman,
Limited Partners of Newburger, Loeb & Co.:

Dear Sirs and Madam:

In order to induce you to enter into the reorganization agreement pursuant to which the assets of Newburger, Loeb & Co., a partnership, are being transferred to the undersigned, and to accept for your interest in the said partnership, notes and preferred stock of the undersigned as set forth in the reorganization agreement, we hereby agree to indemnify you and each of you and save you harmless against any liability, cost or expense that you may suffer or incur if any creditors of the partnership of Newburger, Loeb & Co., now existing or who may now have any rights or claims against said partnership and who shall have not been paid in full by the undersigned, assert or establish any claims against you or any of you by reason of the notes and preferred stock that you are receiving from the undersigned as aforesaid.

Very truly yours,

NEWBURGER, LOEB & CO., INC.

By_____

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT U.

E 992

POWER OF ATTORNEY

In order to represent the undersigned in connection with the transfer of the assets of Newburger, Loeb & Co. to Newburger, Loeb & Co., Inc., the undersigned does hereby appoint Arthur C. Silverman (hereinafter called the "Attorney"), with full power of substitution and resubstitution, for and on behalf of the undersigned in any and all capacities and to the same extent as the undersigned personally could do, to deliver such documents as may be required at the Closing referred to in an agreement between Newburger, Loeb & Co. and Newburger, Loeb & Co., Inc. dated as of the 31st day of December, 1970, to accept delivery on behalf of the undersigned of certificates representing securities of Newburger, Loeb & Co., Inc. issued in the name of the undersigned, and to do such other acts as may be required in connection with the Closing of the transaction contemplated by the December 31, 1970 agreement, hereby ratifying and confirming all that the Attorney may lawfully do in accordance with this Power of Attorney.

This Power of Attorney, being coupled with an interest, shall not be revoked by reason of the death or incapacity of the undersigned, or otherwise. The

provisions of this Power of Attorney shall inure to the benefit of Newburger, Loeb & Co., Inc., its successors and assigns, and shall be binding upon the Attorneys, the undersigned and their respective heirs, personal representatives, distributees and successors.

IN WITNESS WHEREOF, the undersigned has executed and delivered this instrument this 10th day of February, 1971.

Mabel Bench

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On this 10th day of February, 1971, before me personally appeared Mabel Bl[illegible], to me known and known to me to be the person described in, and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Stephen M. Rathkopf

STEPHEN M. RATHKOPF
Notary Public, State of New York
No. 24-8499725 Qual. in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 1972

FINLEY

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

DDITIONAL DEFENDANTS' FINLEY, KUMBLE
EXHIBIT V.

E 994

V XX

Mandle

Mark

Bt U

CG

PM

AS

Kurtz

Leahy

Parker

W. Stark

Daniel Nussbaum

B/A Stupell

Hoffman

Mandle: Summary judgment motion

(1) Rule 317 ? perhaps some interpretation, assumes all cases take out 5 ft.

(2) Swadd'n to $75 M payment pc; loan assembly counter $25 M rejected. Party says RM & K will pay $25 M - Court to all - it permits Le in to counter Nussbaum & Stupell shake Leahy & say indicate "no"

(3) Once you say pd at $75 M, what is CG entitled to? He thinks not entitled to $25 or $300 M subject to various writings.

(4) What kind / security protection? Better than personal ltd. partners

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT V.

E 995

(2) Re Rogerley, it was impossible to make a deal.

(5) Gross willing to take 1st position paper for the full amt. of what is owed & was provided he makes a mutually acceptable agreement w/ K.M.+K.

We are apart on 1) how much owed to Gross?
2) what kind of paper?

Kumbly: the $25M not on the table unless it breaks the deal/sale; not designed to be sucked into the sand.

Stiefel: (1) We didn't have time to decide what is owed to C.G.
(2) TV velocity:

Mandel: The kind of security is more important than amt. The "kind" as the vice president of the deal willing to take 1st. position security.

Stiefel: if everything else worked out, Stiefel would recommit 1st. place paper for Charles Gross.

Rogerley ↓ $1,000,000 subordinated position

Perlbut: No. we object, though Alma wants to have rest of package.

(3)

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT V. E 996

present indebtedness of guaranty [illegible]
Securities & exchange exception in write off of

(1) Cancellation / Lease $1,150,000
(2) Loss on basketball teams 150,000
(3) [illegible] unpaid [illegible] 45[illegible]
annual '69 & early '70

(4) In merger [illegible] [illegible], [illegible]
320,000 / 21 shareholders.
Not charged because argued
that would [illegible] Bank of
have received $200,000
of the [illegible] that
Hotels).

Gen Warrants. Mut. carried at $20M because
convertible into non-registered shs.

Gen I have one witness in 10½% of the
12,000 Giant warrants, etc.

Stock Options (1) $1.5M to $2.3M plus 9 early - went to
zero
(2) M maint 1.5 M, $2.3M in pipeline.

Pension CG getting Board treatment.

(X) Mut (1) broad scope of eventuality by [illegible] Investments -
$15,000
(2) [illegible] $20M & no cash.

(4)

E 997

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT V.

Mandel: [illegible] as III plan, [illegible] and [illegible] and we have to sell [illegible] bonds. We could [illegible] Sandler notes.

Klaus: want [illegible] of numbers

Mandel: we'll [illegible] right?

Klaus: Mandel can [illegible] out.

X → Debt

M.L. — [illegible] Kingsley & Klaus want [illegible]

Contingent: $200,000 Series A preferred
169,000 Ltd. plus mix.

Mandel: ① Klaus.
② Bill 317 Arsenal.
③ Ltd plus mix & split betw $169 & $200 M
vs Ltd plus mix up to 169
& B side until sell (31)

[illegible] Mandel: [illegible] [illegible] [illegible]

(5)

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT V. E 998

(4) Pro-rata redemption of securities of a class.

Gross: (1) $169M Ltd. prtns. pop. fixed figure.

(2) Genl Mtners from CG + genl prtners + vice versa & Ltd's.

(3) Release for Those attepted

(4) Rule 3/8

(5)

Floyd Brenton at Milbank road,
Go to Mandel's office

DITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT W. (August 14, 1972)

E 999

FINLEY EXHIBIT U. S. DIST. COURT S. D. OF N. Y. W

DITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT W.

ATES DISTRICT COURT
DISTRICT OF NEW YORK

NEWBURGER, LOEB & CO., INC. as Assignee of Claims of David Buckley and Mary Buckley,

Plaintiff,

- against -

71 Civ. 685

CHARLES GROSS, MABEL BLEICH and GROSS & CO.,

Defendants,

DEFENDANTS' RULE 9G STATEMENT IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT OF DEFENDANT ON COUNTER-CLAIMS ALEX AIXALA

NEWBURGER, LOEB & CO., a New York Limited Partnership, ANDREW M. NEWBURGER, ROBERT L. NEWBURGER, LEO STERN, ROBERT L. STERN, RICHARD D. STERN, JOHN F. SETTEL, HAROLD J. RICHARDS, SANFORD ROGGENBURG, ADOLPHUS ROGGENBURG, NED D. FRANK, ALEX AIXALA, FRED KAYNE, ROBERT MUH, PAUL RISHER, CHARLES SLOANE, ROBERT S. PERSKY, FINLEY KUMBLE, UNDERB PERSKY & ROTH, a Partnership, AWRENCE J. BERKOWITZ,

Additional Defendants on Counterclaims.

---

1. Items numbered 2 and 5 of the moving party's 9G Statement are denied. In fact, as set forth below, Aixala was substantially involved with the Partnership Newburger, Loeb & Co., with the Corporation Newburger, Loeb & Co. Inc., and with the matters set forth in the counterclaims.

2. Aixala was a client of Persky's from November 1970 on in connection with the formation of the Corporation Newburger, Loeb & Co. Inc., and in connection with the negotiations leading to the Transfer Agreement. Aixala was in fact one of the promoters of the Corporation. Aixala was at all times on notice of the financial condition of the Partnership and on notice of all matters attending the Transfer Agreement, in particular including the refusal of Gross, Bleich and Donoghue to consent. Finally, he was a signatory to the

Transfer Agreement. Persky's knowledge and acts are attributable to his client Aixala.

3. Because of all this, Aixala is not entitled to summary judgment dismissing the counterclaims against him, but instead, the defendants are entitled to summary judgment against Aixala as set forth in the defendants' motion for summary judgment and partial summary judgment.

4. The papers upon which defendants oppose this motion of Aixala are the same papers they submitted in support of defendants' motion for summary judgment and partial summary judgment, plus the depositions of Persky and Risher cited in our brief on this motion.

Respectfully submitted,

GOLDEN, WIENSHIENK & MANDEL
Attorneys for Defendants

By: _____
Philip Mandel, a Member of the Firm

AL DEFENDANTS' FINLEY,
KUMBLE EXHIBIT X.

E 1001

DEFENDANTS'
FINLEY
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

X

NMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N. Y. 10022

MURRAY HILL 8-7800
AREA CODE 212

CABLE ADDRESS
"ROCOKAY NEWYORK"

HERMAN GORDON
ANDREW J. SCHOEN
JEROME L. SINDLER
ASA D. SOKOLOW
GILBERT S. EDELSON
ARNOLD T. ROTH
GEORGE I. GORDON
LAWRENCE B. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MAL L. BARASCH
H. PAUL BURAK

February 6, 1971

SPECIAL DELIVERY

Michael Bamburger, Esq.
Finley, Kumble, Underberg,
Persky & Roth
477 Madison Avenue
New York, N.Y. 10022

Re: Newburger, Loeb & Co.

Dear Michael:

I am writing this letter to you because I continue to have trouble reaching you over the telephone and, if there is to be a closing on February 11, we are down to the critical end wire.

While I appreciate that you have had other and perhaps more important priorities concerning this matter, I want to repeat that our clients cannot and will not close unless there has been ample opportunity to review and arrive at mutually acceptable documents and closing papers. I cannot emphasize this point too strongly, and I am not unmindful of the fact that, in addition to some or all of the principals, there will be 15 or more firms at the closing.

At this stage, we still do not know where you stand with the various assignments, approvals and other required actions and what exceptions will have to be made and what will have to be done after the closing. You were to have reviewed this with your associates over a week ago and get back to me. Representations and warranties of the transferor may not be important to others, but they are to our clients. I also have discussed with you other changes in the basic agreement, as well as in the lease assignment, bill of sale, Andrew Newburger

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT X.

E 1002

employment agreement, among other documents. We still have to resolve the open points on the schedules and at Friday's meeting Bob Persky said that you and I would be working on the releases. In short, there is still a great deal of mechanical and substantive work and time is running out.

You should know by 10:00 A.M. Monday whether or not the closing is still on. I suggest that if the answer is positive, you come over to our offices at your earliest opportunity on Monday and we will work through until we finish all or substantially all of the open material. Please call me.

Sincerely,

H. Paul Burak

HPB:PH
6895-001

cc: Mr. Andrew Newburger

ADDITIONAL
DEFENDANTS' FINLEY,
KUMBLE EXHIBIT Y.

DEFENDANT'S
FINLEY
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Y

E 1003

ger, Loeb & Co.
k Exchange · American Stock Exchange
MENT SERVICE SINCE 1899

OFFICES
NEW YORK
LOS ANGELES

SQUARE · NEW YORK, N. Y. 10004 · (212) 944-6300

February 1, 1971

Mr. Carl A. Rafkind
Vice President
Rafkind & Company, Inc.
55 Broad Street
New York, New York

Re: Charles H. Gross

Dear Mr. Rafkind:

I have your letter of January 29th in which you indicate that "in view of the objections" raised in my letter of January 26th your firm has decided not to employ Mr. Gross.

You should be aware that my letter of January 26th did not state any "objections" but was merely a factual recitation of the contents of a document signed by Mr. Gross.

Any questions concerning the enforceability of that agreement and whether or not your firm wishes to enter into an employment arrangement with Mr. Gross are questions solely for your decision.

Sincerely yours,

Lawrence J. Berkowitz

LJB:cvh

cc: Robert Persky

IONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT Z.

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

E 1004

CHARLES H. GROSS
32 The Intervale
Roslyn Estates, New York

November 23, 1970

Newburger, Loeb & Co.
5 Hanover Square
New York, New York

Gentlemen:

I have heretofore made demand upon you in accordance with the Restated Articles of Limited Partnership of Newburger, Loeb & Co., as amended, for the payment to me of the following:

(a) 15% of the amount of committed capital standing in my name in accordance with Paragraph 8.3 of the partnership agreement;

(b) All of the additional capital standing in my name in accordance with Paragraph 3.3 of the partnership agreement; and

(c) Interest on capital standing in my name from July 1, 1970 in accordance with Paragraph 3.4 of the partnership agreement.

In the event of your failure to make payment of the foregoing amounts promptly upon receipt of this letter, I shall take all such action and exercise all such remedies as may be available to me pursuant to the limited partnership agreement, or otherwise.

Very truly yours,

Charles H. Gross

CHARLES H. GROSS

)NAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT AA.

E 1005

DEFENDANT'S FINLEY EXHIBIT U. S. DIST. COURT S. D. OF N. Y.

FIA 12

Loeb & Co.

VICE SINCE 1899

Y. 10004 (212) 944-6300

Branch Offices

4 East 28th Street at 5th Avenue
525 Seventh Avenue at 38th Street
57 West 57th Street at 6th Avenue
1900 Ave. of the Stars, Los Angeles, Calif.
2091 Broadway at 72nd Street
931 Madison Avenue at 74th Street
920 Flatbush Ave at Church Ave., Bklyn.
110 N Doheny Dr., Beverly Hills, Calif.

tock Exchange · Chicago Board of Trade · New York Cotton Exchange · Commodity Exchange · New York Cocoa Exchange

November 13, 1970

Michael A. Bamberger, Esq.
Finley, Kumble, Underberg, Persky & Roth
477 Madison Avenue
New York, N. Y. 10007

Re: Newburger, Loeb vs. Buckley

Dear Mike:

Enclosed herewith is a file on the pending arbitration proceedings by means of which we are attempting to collect in excess of $300,000 from Mr. & Mrs. Buckley.

Please let me know if you will require any additional material.

Very truly yours,

Richard N. Miles

RNM/lp
Enc.

NAL DEFENDANTS' FINLEY,
KUMBLE EXHIBIT BB.

E 1006

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

M E M O R A N D U M

y Grutman (cc: Robert S. Persky and Herbert F. Roth)

. Bamberger November 16, 1970

Re: Newburger, Loeb & Co. v.
David and Mary Buckley
File No. 1528.001

Attached hereto is the file received today from Newburger, Loeb & Co. with respect to the arbitration before the AAA by Newburger, Loeb against Mr. and Mrs. Buckley. This is the matter which we discussed last week and which you have agreed to handle.

I noted, looking quickly through the file, that on November 11th a letter was written to the AAA requesting that the proceeding "be held in abeyance pending the appearance of successor counsel." I would think we should promptly note our appearance since, as plaintiff, it is in our interest to proceed.

When you have had a chance to look over the file, it might be a good idea for you and Bob to chat with the client concerning fees on this matter.

MAB

NQC

DEFENDANTS' FINLEY, KUMBLE EXHIBIT CC.

DEFENDANT'S
FINLEY
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
CC 12

E 1007

ES DISTRICT COURT
STRICT OF NEW YORK
----------x

, LOEB & CO., INC., as Assignee of Claims of David Buckley and Mary Buckley, and Newburger, Loeb & Co.,

Plaintiff,

- against -

CHARLES GROSS, MABEL BLEICH, JEANNE DONOGHUE and GROSS & CO.,

Defendants.
----------x

Index No. 685/71

AMENDED COMPLAINT

Plaintiff, complaining of defendants by its undersigned attorneys, Messrs. Finley, Kumble, Underberg, Persky & Roth, alleges, upon information and belief that:

JURISDICTION

1. This Court's jurisdiction is based upon: Section 22(a) of the Securities Act of 1933, as amended, 15 U.S.C. §77v(a) (the "Securities Act"); Section 27 of the Securities Exchange Act of 1934, as amended, 15 U.S.C. §78aa (the "Exchange Act"); and the principles of pendant jurisdiction.

2. This action is instituted as the result of defendants' violation of Section 17(a) of the Securities Act; Sections 10(b) and 15(c) of the Exchange Act; the Rules and Regulations of the Securities Exchange Commission (the "SEC") promulgated under both Acts, and in particular: Rule 10b-5, 17 C.F.R. 240.10b-5; Rule 15c1-7, 17 C.F.R. 240.15c1-7; the Rules of the National Association of Security Dealers (the "NASD"); and common law principles.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT CC.

E 1008

PLAINTIFF

3. Plaintiff NEWBURGER, LOEB & CO., INC., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 5 Hanover Square, New York, New York.

4. On or about December 30, 1970, for good and sufficient consideration, DAVID BUCKLEY and his wife, MARY BUCKLEY, (the "Buckleys"), then residing at 82 West River Road, Rumson, New Jersey, assigned to NEWBURGER, LOEB & CO., a New York limited partnership, all of the claims set forth in the First, Second, Third and Fourth Causes of Action against the defendants herein.

5. On or about February 11, 1971, for good and sufficient consideration, NEWBURGER, LOEB & CO. assigned to the plaintiff, NEWBURGER, LOEB & CO., INC., all of the claims and Causes of Action against all defendants herein.

DEFENDANTS

6. Defendant CHARLES GROSS is an individual residing at 32 The Intervale, Roslyn Heights, New York. During all relevant times, upon information and belief, he was a partner, agent and employee of defendant GROSS & CO.

7. Defendant MABEL BLEICH is an individual residing at 1020 Grand Concourse, Bronx, New York. During all relevant times, upon information and belief, she was a partner, agent and employee of defendant GROSS & CO.

8. Defendant JEANNE DONOGHUE at all relevant times, upon information and belief, was a partner, agent and employee of defendant GROSS & CO., and transacted business in that

capacity in the City, County and State of New York.

9. Defendant GROSS & CO., upon information and belief, was a partnership organized and existing under the laws of the State of New York. During all relevant times, it was principally engaged as a broker and dealer in securities, transacting business in the City, County and State of New York.

FOR A FIRST CAUSE OF ACTION AGAINST
ALL DEFENDANTS, JOINTLY AND SEVERALLY

10. This First Cause of Action is instituted under Section 22(a) of the Securities Act to enforce the liability created by Section 17(a) of the Securities Act.

11. During a four-and-a-half (4-1/2) year period between April, 1962, and August, 1966, the defendants, by the use of the mails and other instruments of transportation or communication in interstate commerce, directly and indirectly engaged in transactions, practices or courses of business, hereinafter more fully set forth, which operated and were calculated to operate as a fraud and deceit upon the Buckleys, in connection with the offer and sale of securities.

12. Between April, 1962, and August, 1966, the Buckleys maintained a margin account with defendant GROSS & CO.

13. During that four-and-a-half (4-1/2) year period, defendants CHARLES GROSS, MABEL BLEICH and JEANNE DONOGHUE were partners and registered representatives of defendant GROSS & CO., in charge of the activities of said firm and responsible for its operations.

14. During that four-and-a-half (4-1/2) year period,

the individual defendants knew, or should have known, that GROSS & CO. and its registered representative and employee, one CHARLES JORDAN, had suggested, encouraged and effected a total of more than 1,100 transactions in the margin account of the Buckleys.

15. Upon information and belief, all of the more than 1,100 transactions effected in the margin account of the Buckleys were made pursuant to the advice of an authorized representative of the defendants, and with their acquiescence, the Buckleys relying not only upon the professed knowledge and expertise of said representative in the securities market, but also upon the fiduciary relationship of broker to customer.

16. The total dollar amount of purchases and sales during that 4-1/2 year period was $9,329,557. The average investment by the Buckleys in the account during that same period was $107,520. Thus, the average investment of the Buckleys in the account was turned over approximately 40 times.

17. The unusually excessive and, under the circumstances, totally unwarranted heavy trading was not consistent with, and was in derogation of, defendants' joint and several primary and fiduciary duty to advise and encourage sound investment decisions and control and supervise the conduct of GROSS & CO. and its agents and employees, and to prevent the churning of its customers' accounts.

18. The unusually excessive and, under the circumstances, totally unwarranted heavy trading in the Buckleys' account was suggested, encouraged, effected and permitted primarily for the

purpose of generating commissions, which, upon information and belief, were in excess of $75,000.

19. The unusually excessive and, under the circumstances, totally unwarranted heavy trading in the Buckleys' account resulted in net losses to the Buckleys exceeding $174,000.

20. The defendants, CHARLES GROSS, MABEL BLEICH and JEANNE DONOGHUE, as partners of defendant GROSS & CO., were under the obligation to properly review the actions of the firm and its duly authorized representative, as well as to supervise the transactions in the Buckleys' account, which, upon information and belief, each of the individual defendants, jointly and severally, failed to do, and for which they and GROSS & CO. are jointly and severally liable.

FOR A SECOND CAUSE OF ACTION

21. This Second Cause of Action is instituted under Section 27 of the Exchange Act, to enforce rights arising out of defendants' violation of Section 10 of the Exchange Act, and Rule 10b-5 promulgated thereunder, 17 C.F.R. §240.10b-5.

22. Plaintiff repeats each and every allegation set forth in paragraphs "10" to "19" with the same force and effect as if the same were hereat fully set forth.

FOR A THIRD CAUSE OF ACTION

23. This Third Cause of Action is instituted under Section 27 of the Exchange Act, to enforce rights arising out of defendants' violation of Section 15(c) of the Exchange Act and Rule 15c1-7 promulgated thereunder, 17 C.F.R. 240.15c1-7.

24. Plaintiff repeats each and every allegation set forth in paragraphs "10" to "19" with the same force and effect as if the same were hereat fully set forth.

FOR A FOURTH CAUSE OF ACTION

25. Plaintiff repeats each and every allegation set forth in paragraphs "10" to "19" with the same force and effect as if the same were hereat set forth in full.

26. Defendants have violated common law duties owed by them to the Buckleys.

FOR A FIFTH CAUSE OF ACTION
AGAINST DEFENDANT CHARLES GROSS

27. On or about January 1, 1969, defendant CHARLES GROSS entered into an agreement in writing (the "Partnership Agreement"), wherein and whereby the parties thereto agreed to conduct a general brokerage business in securities and commodities under the firm name and style of Newburger, Loeb & Co. (the "Firm") upon the terms and conditions set forth therein.

28. Thereafter, from time to time, the Partnership Agreement was amended, the Partnership Agreement as amended hereinafter called "Amended Partnership Agreement."

29. Paragraph 1.2 of the Partnership Agreement and the Amended Partnership Agreement named defendant CHARLES GROSS as a general partner in the Firm.

30. Paragraph 4.2 of the Partnership Agreement and the Amended Partnership Agreement provided in part that:

"The General Partners as among themselves shall be governed by the following rules of conduct:

(a) Each General Partner shall:

(2) Exercise his best efforts in furtherance of the Firm business;

(3) Conform to the rules of those Exchanges to which the Firm belongs or on which they deal through a partner (in case of conflict, the rules of the New York Stock Exchange shall govern); and

(4) Exercise due care in the performance of his activities for the Firm. . .

(b) No General Partner shall:

(2) Wilfully do any act adverse to the interest of the Firm;

(3) Except as provided in paragraph 4.4, make any investment for the Firm account or enter into any syndicate. . ."

31. Paragraph 4.3 of the Partnership Agreement and the Amended Partnership Agreement provided, in part, that:

"Leo Stern, Robert L. Newburger, Andrew M. Newburger, Robert L. Stern and Charles H. Gross are constituted an Executive Committee of the General Partners, which Committee by affirmative vote of a majority of its members shall have full power and authority on behalf of all of the partners of this Firm at any time and from time to time, to manage the affairs and business of the partnership to the exclusion of the then General Partnership, except where these Articles or the rules and regulations of any Securities Exchange of which the

partnership is a member shall require otherwise."

32. Paragraph 4.4 of the Agreement provided that:

"The Executive Committee designated in paragraph 4.3, or its designee or designees, is further authorized and empowered to make investments for the partnership and to enter into syndicates on behalf of the partnership in connection with any matter, thing or venture which they in their discretion deem proper."

33. Between on or about October 7, 1969, and on or about April 28, 1970, defendant GROSS breached the Partnership Agreement and the Amended Partnership Agreement, and further, in violation of his fiduciary obligations to the Firm, purchased 39,100 shares of the common stock in City Investing Corp. for and on behalf of the Firm, and further engaged in transactions on behalf of the Firm in warrants of Tyco Laboratories, Inc.

34. Said purchases and transactions were made without designation, permission or approval by the Executive Committee of the Firm.

35. By virtue of the foregoing, the Firm was damaged in the sum of $140,682.45, no part of which has been paid.

36. Prior to the commencement of this action, the foregoing claim was assigned by the Firm to Plaintiff.

FOR A SIXTH CAUSE OF ACTION
AGAINST DEFENDANT CHARLES GROSS

37. Repeats and realleges the allegations contained in paragraphs "26", "27", "28", "29", "30" and "31" of the Amended Complaint.

38. In further breach of the Partnership Agreement and the Amended Partnership Agreement, defendant GROSS made, caused and permitted the Firm to make material misrepresentations to the Board of Governors of the New York Stock Exchange, resulting in damage to the firm of $50,000.

39. Prior to the commencement of this action, the foregoing claim was assigned by the Firm to Plaintiff.

FOR A SEVENTH CAUSE OF ACTION
AGAINST DEFENDANT CHARLES GROSS

40. Repeats and realleges the allegations contained in paragraphs "26", "27", "28" and "29" of the Amended Complaint.

41. Defendant GROSS has failed and refuses to make repayment to the Firm of a $500 petty cash advance, or of $1,600 in insurance premiums for his sole and exclusive benefit.

FOR AN EIGHTH CAUSE OF ACTION
AGAINST DEFENDANT CHARLES GROSS

42. Repeats and realleges the allegations contained in paragraphs "26", "27", "28", "29", "30" and "31" of the Amended Complaint.

43. At all times hereinafter alleged, defendant GROSS was a member of the Executive Committee of the Firm and one of its managing partners.

44. By virtue of his said position, defendant GROSS was aware that the Firm was in severe financial difficulties.

45. Defendant, on behalf of the Firm, executed a lease on new space for the Firm (the "Lease").

46. Subsequent to the execution of the Lease, it was determined by the Firm that it was unable, due to severe

financial difficulties, to occupy the premises demised pursuant to the Lease.

47. Defendant GROSS, with knowledge of that decision, and of the severe financial difficulties of the Firm, received an offer on behalf of the Firm from the landlord named under the terms of the Lease, wherein and whereby the landlord offered to terminate the Lease and to pay to the Firm the sum of $100,000 for the repurchase of the Lease.

48. In breach of his fiduciary duties to the Firm, and in breach of the Partnership Agreement and the Amended Partnership Agreement, defendant GROSS failed to advise the Firm of this offer by the landlord under the Lease.

49. By virtue of the foregoing, the Firm was deprived of said sum of $100,000, and was further compelled to make payment to the landlord of the sum of $430,000 in order to "buy out" the Lease, all to the damage of the Firm in the sum of $530,000.

50. Prior to the commencement of this action, the foregoing claim was assigned by the Firm to Plaintiff.

FOR A NINTH CAUSE OF ACTION
AGAINST DEFENDANT CHARLES GROSS

51. Repeats and realleges the allegations contained in paragraphs "26", "27", "28", "29" and "30" of the Amended Complaint.

52. Defendant GROSS, as a managing partner of the Firm, set salaries for his various employees from time to time.

53. In breach of the Partnership Agreement and the Amended Partnership Agreement, and in violation of his fiduciary duties to the Firm, defendant GROSS caused wasteful payments to be made as purported salary to one MABEL BLEICH.

54. Said payments were made, not for sufficient or adequate value received by the Firm for the services of MABEL BLEICH, but as and for the acquittal of a personal responsibility by defendant GROSS and his family.

55. By virtue of the foregoing, the Firm was damaged in the sum of $20,000.

56. Prior to the commencement of this action, the foregoing claim was assigned by the Firm to Plaintiff.

FOR A TENTH CAUSE OF ACTION
AGAINST DEFENDANT CHARLES GROSS

57. Repeats and realleges the allegations contained in paragraphs "26", "27", "28", "29" and "30" of the Amended Complaint.

58. Prior to March, 1970, defendant GROSS recommended to the Executive Committee of the Firm that the Firm enter into a joint venture with one LOUIS BRACKER in the brokerage business.

59. Thereafter, on the basis of such recommendation, the Firm entered into said joint venture.

60. In breach of the Partnership Agreement and the Amended Partnership Agreement, and further, in breach of his fiduciary duties to the Firm, defendant GROSS failed and omitted to state to the Firm or to its Executive Committee that he had been warned that BRACKER was not a person of good character or reputation in connection with his business dealings, or that the Firm would be likely to experience difficulties with BRACKER in the event it entered into a business relationship with him.

61. By virtue of the foregoing, the Firm was damaged in the sum of $60,000.

62. Prior to the commencement of this action, the foregoing claim was assigned by the Firm to Plaintiff.

FOR AN ELEVENTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS

63. Plaintiff repeats each and every allegation set forth in paragraphs "10" to "19" with the same force and effect as if the same were hereat set forth in full.

64. That by reason of the fraudulent conduct and deceit practiced and participated in by the defendants, the acts and practices engaged in by the defendants which constitute violations of the Securities Act, the Exchange Act and the Rules and Regulations promulgated under both acts, Plaintiff has been compelled to and has engaged counsel to prosecute this action against the defendants herein.

65. Plaintiff has been informed and verily believes that the services to be rendered by said counsel could be extensive and may be required over a long period of time, and if not settled, will require substantial cash disbursements in the prosecution of this action by reason of the complexity of the transactions in the account of the Buckleys, and will further require extensive examinations before trial and that the fair and reasonable value of the services to be rendered by said counsel in the investigation, preparation and trial of this action will be in excess of $50,000.

WHEREFORE, Plaintiff demands judgment in its favor and against defendants as follows:

(1) On the FIRST, SECOND, THIRD and FOURTH CAUSES OF ACTION, money damages as against the defendants, CHARLES GROSS,

MABEL BLEICH, JEANNE DONOGHUE and GROSS & CO. in excess of $249,000, jointly and severally, or such other measure of recovery for defendants' violations, as the Court may deem just and proper;

(2) On the FIFTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $140,682.45;

(3) On the SIXTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $50,000;

(4) On the SEVENTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $2,100;

(5) On the EIGHTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $530,000;

(6) On the NINTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $20,000;

(7) On the TENTH CAUSE OF ACTION, for money damages against defendant CHARLES GROSS in the sum of $60,000;

(8) On the ELEVENTH CAUSE OF ACTION, money damages against the defendants, jointly and severally, in excess of $50,000, or such other sum as the Court may find just and reasonable, as and for Plaintiff's counsel fees; and

(9) Such other, further and different relief as the Court may deem proper;

together with interest from the date of the violations or wrongs hereinbefore set forth, with costs and disbursements.

Dated: New York, New York
September 14, 1971

FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH

By:
Alan M. Gelb
A Member of the Firm
Attorneys for Plaintiff
477 Madison Avenue, New York, New York 10022
(212) 371-5900

ADDITIONAL
DEFENDANTS' FINLEY,
KUMBLE EXHIBIT DD.

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
DD

E 1020

September 14, 1971

BY HAND

Philip Mandel, Esq.
Golden, Wienshienk & Mandel
10 East 40th Street
New York, New York 10016

Re: Newburger, Loeb & Co., Inc., etc.
v. Charles Gross, et al.
Our file no. 1629.112

Dear Phil:

Pursuant to our telephone conversation wherein we agreed that Plaintiff would deliver a proposed form of Amended Complaint in the captioned matter, the same is enclosed. Please accept my apologies for its late delivery.

I look forward to seeing you tomorrow.

Sincerely yours,

FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH

By:
Alan M. Gelb

AMG/js

Enclosure

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT GG.

E 1021

PERIOD ENDING		ACCOUNT	R.R.	PAGE
2-27-70	32	17-20901	002	5
CARD STMT.		S.S./I.D. NO.		
01-30-70		14621		

201 ACCOUNT
ATTN MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.
MEMBERS
NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

9 HANOVER SQUARE
NEW YORK, N.Y. 10004
TELEPHONE (212) 944-8300
CABLE ADDRESS "NEWBROMEND," N.Y.

YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

...O ALL COMMUNICATIONS TO THE FIRM AND NOT TO
...ND KINDLY MENTION YOUR ACCOUNT NUMBER.

...VE THIS ... E. & O.E. WE MUST BE ADVISED
... INCOME ... IMMEDIATELY OF ANY ERRORS
... OR OMISSIONS.

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED	REF. TYPE
02 09		100	CONTROL DATA CORP - DELAWARE-	74 7/8		7,478.75	20
02 09		100	CONTROL DATA CORP - DELAWARE-	75 3/8		7,528.74	20
02 09		200	CONTROL DATA CORP - DELAWARE-	72 3/4		14,532.50	20
			AS OF 2-2-70				
02 09		300	CONTROL DATA CORP - DELAWARE-	75 1/4		22,548.74	20
02 09		800	CONTROL DATA CORP - DELAWARE-	75 1/2		22,623.74	20
02 09		400	CONTROL DATA CORP - DELAWARE-	72 5/8		29,015.01	20
02 09		500	CONTROL DATA CORP - DELAWARE-	74 3/4		37,331.25	20
02 09		600	CONTROL DATA CORP - DELAWARE-	75 1/4		45,097.49	20
02 09		1100	CONTROL DATA CORP - DELAWARE-	72 7/8		80,066.27	20
02 09		100	FAIRCHILD CAMERA & INSTRUMENT	80 1/4		8,016.23	20
02 09		400	FAIRCHILD CAMERA & INSTRUMENT	80		31,984.26	20
02 09		200	INTL BUSINESS MACHINES CORP	339 1/4		67,829.34	20
02 09		800	INTL BUSINESS MACHINES CORP	339 1/2		101,819.01	20
02 09		500	INTL BUSINESS MACHINES CORP	340		169,948.15	20
02 09	600		NATIONAL CASH REGISTER CO	137	68,535.75		20
02 09		500	NATIONAL CASH REGISTER CO	139 3/8		55,712.68	20
02 09		500	NATIONAL CASH REGISTER CO	139 3/8		69,640.85	20
02 09		600	NATIONAL CASH REGISTER CO	139		83,344.03	20
02 09	600		POLAROID CORP	100 5/8	95,355.28		20
02 09	500		TELEX CORP	136 1/8	68,105.25		20
02 09	500		TELEX CORP	141 5/8	70,847.75		20
02 09		500	TELEX CORP	146 1/4		73,078.28	20
02 09	100		UNIVERSITY COMPUTING CO	61 3/4	6,181.60		20
02 09		100	UNIVERSITY COMPUTING CO	61 3/4		6,166.27	20
02 10	200		CONTROL DATA CORP - DELAWARE-	63 3/4	12,763.20		20
02 10	300		CONTROL DATA CORP - DELAWARE-	63 1/2	19,069.80		20
02 10	800		CONTROL DATA CORP - DELAWARE-	64 3/4	19,444.60		20
02 10	300		CONTROL DATA CORP - DELAWARE-	67 1/4	20,194.80		20
02 10	700		CONTROL DATA CORP - DELAWARE-	67	46,946.20		20
02 10	900		CONTROL DATA CORP - DELAWARE-	64 1/2	58,109.40		20
02 10	1000		CONTROL DATA CORP - DELAWARE-	67	67,066.00		20
02 10	1300		CONTROL DATA CORP - DELAWARE-	65	84,585.80		20
02 10	2000		CONTROL DATA CORP - DELAWARE-	68 1/4	136,662.00		20
02 10		100	CONTROL DATA CORP - DELAWARE-	69 5/8		6,953.76	20
02 10		200	CONTROL DATA CORP - DELAWARE-	65 1/4		13,032.53	20
02 10		300	CONTROL DATA CORP - DELAWARE-	65		19,473.01	20

FILE COPY

Finley
EXHIBIT
U.S. DIST. COURT
S.D. OF N.Y.
GG 78

ADDITIONAL DEFENDANTS' FINLEY - KUMBLE EXHIBIT GG.

E 1022

PERIOD ENDING	ACCOUNT	R.R.	PAGE
2-27-70 32	07-20901	002	4
LAST STMT.	S.S./I.D. NO.		
01-30-70	14020		

001 ACCOUNT
ATTN MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS

NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

9 HANOVER SQUARE
NEW YORK, N.Y. 10004

TELEPHONE (212) 944-8300
CABLE ADDRESS "NEWBROMEND," N.Y.

YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

PLEASE ADDRESS ALL COMMUNICATIONS TO THE FIRM AND NOT TO INDIVIDUALS AND KINDLY MENTION YOUR ACCOUNT NUMBER.

PLEASE PRESERVE THIS STATEMENT FOR INCOME TAX PURPOSES

E. & O.E. WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS OR OMISSIONS.

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
0206		600	CONTROL DATA CORP - DELAWARE-	74 1/8		29,615.00
0206		400	CONTROL DATA CORP - DELAWARE-	74 1/2		29,765.00
0206		500	CONTROL DATA CORP - DELAWARE-	74 1/4		37,081.25
0206		800	CONTROL DATA CORP - DELAWARE-	74		59,130.01
0206		900	CONTROL DATA CORP - DELAWARE-	74 1/4		66,746.26
0206		100	FAIRCHILD CAMERA & INSTRUMENT	77 1/2		7,741.24
0206		400	FAIRCHILD CAMERA & INSTRUMENT	77 3/8		30,914.36
0206		500	FAIRCHILD CAMERA & INSTRUMENT	78 1/4		39,081.21
0206			INTL BUSINESS MACHINES CORP	334 3/4	33,482.65	
0206		100	INTL BUSINESS MACHINES CORP	335	134,030.60	
0206		500	INTL BUSINESS MACHINES CORP	334 1/2	167,288.25	
0206		500	INTL BUSINESS MACHINES CORP	335	167,545.75	
0206		500	INTL BUSINESS MACHINES CORP	335 1/2	167,788.25	
0206		500	INTL BUSINESS MACHINES CORP	336	168,045.75	
0206		500	INTL BUSINESS MACHINES CORP	335		32,489.28
0206			INTL BUSINESS MACHINES CORP	335 1/2		33,529.07
0206		100	INTL BUSINESS MACHINES CORP	336		33,589.67
0206		300	INTL BUSINESS MACHINES CORP	335 1/4		100,544.03
0206		800	INTL BUSINESS MACHINES CORP	334 3/4		133,858.72
0206		400	INTL BUSINESS MACHINES CORP	335		167,448.40
0206		500	INTL BUSINESS MACHINES CORP	137 7/8	66,972.75	
0206			NATIONAL CASH REGISTER CO	136 5/8		12,653.17
0206		500	NATIONAL CASH REGISTER CO	136 1/2		54,566.70
0206		100	NATIONAL CASH REGISTER CO	100 3/4	10,087.05	
0206		400	POLAROID CORP	100 7/8	40,378.60	
0206		500	POLAROID CORP	100 1/4	50,094.75	
0206			POLAROID CORP	100 1/2		30,122.24
0206		300	POLAROID CORP	100 3/8		70,197.14
0206		700	POLAROID CORP	100		99,907.50
0206		1000	POLAROID CORP	101 3/4		101,657.40
0206		1000	POLAROID CORP	145 3/8	29,089.10	
0206		200	TELEX CORP	145	43,521.15	
0206		800	TELEX CORP	146 1/4		14,615.02
0206		100	TELEX CORP	146		58,362.63
0206		600	TELEX CORP	72 7/8	51,058.70	
0209		700	CONTROL DATA CORP - DELAWARE-	72 7/8	72,941.00	
0209		1000	CONTROL DATA CORP - DELAWARE-	74 5/8		7,453.75
0209						

FILE COPY

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT GG.

E 1023

PERIOD ENDING		ACCOUNT	R.N.	PAGE
2-27-70	32	87-20901	002	2
LAST STMT.		S.S./I.D. NO.		
01-30-70		14818		

901 ACCOUNT
ATTN MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS

NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

9 HANOVER SQUARE
NEW YORK, N.Y. 10004

TELEPHONE (212) 944-8700
CABLE ADDRESS "NEWBRONCO," N.Y.

YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

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PLEASE PRESERVE THIS STATEMENT FOR INCOME TAX PURPOSES

E. & O.E. WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS OR OMISSIONS.

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
0203	100		TELEX CORP	144	14,407.05	
0203	100		TELEX CORP	144 1/2	14,457.05	
0203	100		TELEX CORP	145 3/4	14,582.05	
0203	100		TELEX CORP	146	14,607.05	
0203	100		TELEX CORP	146 1/4	14,632.05	
0203	200		TELEX CORP	145	29,014.10	
0203	200		TELEX CORP	146 3/8	29,282.05	
0203	200		TELEX CORP	145 1/2		14,540.65
0203		100	TELEX CORP	145 3/4		14,565.65
0203		100	TELEX CORP	146		14,590.65
0203		100	TELEX CORP	146 1/4		29,231.31
0203		200	TELEX CORP	148		73,953.27
0203		500	TELEX CORP			
			SHORT			21,051.41
0203		200	XEROX CORP	105 3/8		31,547.21
0203		300	XEROX CORP	105 1/4		
0204	500		GERBER PRODUCTS CO	36	18,037.65	
0205	100		ATLANTIC RICHFIELD CO	73 5/8	7,370.60	
0205	900		ATLANTIC RICHFIELD CO	73 7/8	66,560.40	
0205	500		CONTROL DATA CORP - DELAWARE	88 1/8	44,095.50	
0205	500		CONTROL DATA CORP - DELAWARE	89 3/4	44,908.60	
0205		100	CONTROL DATA CORP - DELAWARE	89 3/4		8,966.22
0205		400	CONTROL DATA CORP - DELAWARE	89		35,564.88
0205		500	CONTROL DATA CORP - DELAWARE	87 1/4		43,631.12
0205	100		FAIRCHILD CAMERA & INSTRUMENT	78 1/2	7,858.10	
0205	400		FAIRCHILD CAMERA & INSTRUMENT	78 1/4	31,332.40	
0205	500		FAIRCHILD CAMERA & INSTRUMENT	77 7/8	38,970.50	
0205	500		FAIRCHILD CAMERA & INSTRUMENT	80 3/8	40,228.00	
0205		200	FAIRCHILD CAMERA & INSTRUMENT	80 1/4		16,032.11
0205		300	FAIRCHILD CAMERA & INSTRUMENT	80 1/8		24,211.21
0205	200		INTL BUSINESS MACHINES CORP	338 1/4	67,665.30	
0205	300		INTL BUSINESS MACHINES CORP	338 1/8	101,460.45	
0205		600	INTL BUSINESS MACHINES CORP	341		170,448.14
0205	100		NATIONAL CASH REGISTER CO	140 1/4	14,033.55	
0205	400		NATIONAL CASH REGISTER CO	140 1/2	56,234.20	
0205	500		NATIONAL CASH REGISTER CO	140	70,042.75	
0205	100		POLAROID CORP	100	10,007.05	
0205	100		POLAROID CORP	100 5/8	10,071.05	

FILE COPY

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT GG. 1024

PERIOD ENDING		ACCOUNT	R.R.	PAGE
3-26-70	32	97-20901	002	3
LAST STMT.		S.S./I.D. NO.		
02-27-70		14617		

901 ACCOUNT
ATTN MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.
MEMBERS
NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

9 HANOVER SQUARE
NEW YORK, N.Y. 10004
TELEPHONE (212) 944-6300
CABLE ADDRESS "NEWBROHEND," N.Y.

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E. & O.E. WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS OR OMISSIONS.

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED	ACCT TYPE
0323		300	TEK CORP	62 3/8		18,686.32	20
0323	100		MEMOREX CORP	122 1/4	12,232.05		20
0323	200		MEMOREX CORP	121 1/4	24,264.10		20
0323	300		MEMOREX CORP	120 1/2	36,171.15		20
0323	300		MEMOREX CORP	122 3/8	36,733.65		20
0323	500		MEMOREX CORP	120 1/8	60,097.75		20
0323	500		MEMOREX CORP	121 3/8	60,722.75		20
0323		100	MEMOREX CORP	123		12,290.70	20
0323		500	MEMOREX CORP	120 1/2		60,203.54	20
0323		500	MEMOREX CORP	122 1/4		61,078.52	20
0323		800	MEMOREX CORP	122 3/4		96,125.63	20
0323							20
0323	200		TELEX CORP	112 7/8	22,589.10		20
0323	300		TELEX CORP	112 7/8	33,883.65		20
0323		500	TELEX CORP	115 1/2		57,703.59	20
0323			DATA PROCESSING FINANCIAL & GENERAL CORP	21	21,075.30		20
0324	1000		E I DU PONT DE NEMOURS & CO	95 3/8	38,182.42		20
0324	400		E I DU PONT DE NEMOURS & CO	95 1/2	57,348.60		20
0324	600		FAIRCHILD CAMERA & INSTRUMENT	72 1/4	7,233.10		20
0324	100		INTL BUSINESS MACHINES CORP	319 1/4	95,797.95		20
0324	500		INTL BUSINESS MACHINES CORP	323	161,545.75		20
0324	700		INTL BUSINESS MACHINES CORP	319 1/4	223,528.55		20
0324				321 3/4		321,647.06	20
0324	100		TEK CORP	63 3/8	6,344.10		20
0324	100		TEK CORP	63 3/8	6,344.10		20
0324	300		TEK CORP	63 1/8	18,957.30		20
0324				64		31,456.36	20
0324		500	TEK CORP	20 5/8		2,054.05	20
0325		100	DATA PROCESSING FINANCIAL & GENERAL CORP	20 7/8		2,079.05	20
0325		600	DATA PROCESSING FINANCIAL & GENERAL CORP	20 1/2		12,249.35	20
0325				96 1/4		96,162.07	20
0325		1000	E I DU PONT DE NEMOURS & CO	74 1/4		7,416.25	20
0325		100	FAIRCHILD CAMERA & INSTRUMENT	323 3/4		32,364.70	20
0325		100	INTL BUSINESS MACHINES CORP	323 1/2		129,350.81	20
0325		400	INTL BUSINESS MACHINES CORP				
	1						

FILE COPY

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT GF. E 1025

PERIOD ENDING	ACCOUNT	R.R.	PAGE
1-26-70 32	07-20901	002	1
LAST STMT.	S.S./I.D. NO.		
02-27-70	14675		

901 ACCOUNT
ATTN MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS

NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

5 HANOVER SQUARE, NEW YORK, N.Y. 10005 — TELEPHONE (212) 944-6300, CABLE ADDRESS "NEWBROTHERS," N.Y.

YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

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E. & O.E. WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS OR OMISSIONS.

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED	ACCT. TYPE
0227			OPENING BALANCE CASH ACCOUNT			9,218.19	12
0304			TRF PROFIT FR 901-1-2 TO 901-2	RL	11,013.15		12
0304		8000	RTS STANDARD OIL OF NJ 3-11-70	15/64		1,794.96	12
			WHEN ISSUE EXTENDED				
			AS OF 2-18-70				
0309	8000		RTS STANDARD OIL OF NJ 3-11-70	15/64	1,794.96		12
			AS OF 2-18-70				
			CXL PREV SELL				
0309		8000	RTS STANDARD OIL OF NJ 3-11-70	15/64		1,866.96	12
			AS OF 2-18-70				
0326			CLOSING BALANCE CASH ACCOUNT			72.00	12
					****	****	
			OPENING BALANCE MARGIN ACCOUNT			124,959.71	20
0227			TRF PROFIT FR 901-1-2 TO 901-2	JRL		11,013.15	20
0304			TRF BALANCE FR 5 TO 2	JRL		1,352.87	20
0305			TRF PROFIT 2/26/70	JRL		1,866.24	20
0305			TFR FM 72090229	J/E	25,000.00		20
0306			NL SHARE OF FEB PROF	J/E	35,000.00		20
0310			NL SHARE OF SAN PROFITS	J/E	25,000.00		20
0310			AL ROSEN-FIRM TOG CK 1744	C/P	35,000.00		20
0310			SHORTS REVERSED 1/1-1-20	INT	486.95		20
0311			SHORTS REVERSED	INT	239.38		20
0311			INT CR ON 25000.00 28 DAYS	INT	184.71		20
0313			ITEK CORP	68 1/4	34,165.50		20
0316	500		BURROUGHS CORP	139 5/8	41,908.65		20
0317	300		BURROUGHS CORP	140 1/4		42,047.00	20
0317		300	WALT DISNEY PRODUCTIONS	131 1/8	39,350.65		20
0317		300	WALT DISNEY PRODUCTIONS	130		38,972.07	20
0317			FAIRCHILD CAMERA & INSTRUMENT	75 1/2	22,669.80		20
0317	100		FAIRCHILD CAMERA & INSTRUMENT	75 1/4		7,516.24	20
0317	200		FAIRCHILD CAMERA & INSTRUMENT	75 1/8		15,007.49	20
0317			INTL BUSINESS MACHINES CORP	319 1/2	159,788.25		20
0317		500	INTL BUSINESS MACHINES CORP	321 1/2		160,698.53	20
0317	200		ITEK CORP	68 5/8		13,707.52	20
0317	300		ITEK CORP	68 1/4		20,448.19	20

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ADDITIONAL DEFENDANTS'
FINLEY, KUMBLE EXHIBIT GG.
E 1026

PERIOD ENDING		ACCOUNT	R.R.	PAGE
4-24-70	32	97-20901	002	2
LAST STMT.		S.S./I.D. NO.		
03-26-70	14920			

901 ACCOUNT
ATTN MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS

NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

8 HANOVER SQUARE
NEW YORK, N.Y. 10004
TELEPHONE (212) 944-6300
CABLE ADDRESS "NEWBROHEND," N.Y.

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DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED	ACCT TYPE
04/01		200	MEMOREX CORP	118 7/8		23,756.42	20
04/01		300	MEMOREX CORP	117 3/4		35,297.14	20
04/01		500	MEMOREX CORP	119 1/4		59,576.55	20
04/01		100	MEMOREX CORP	118 7/8		11,870.21	20
04/02	1,000		MEMOREX CORP	116	116,070.50		20
04/02		800	MEMOREX CORP	118		94,325.71	20
04/02		1,000	MEMOREX CORP	115 1/2		115,407.19	20
04/03	500		MEMOREX CORP	113	56,535.25		20
04/03		500	MEMOREX CORP	114 3/4		57,328.60	20
04/13	200		CONTROL DATA CORP - DELAWARE-	49 1/4	9,869.46		20
04/13	300		CONTROL DATA CORP - DELAWARE-	48 5/8	14,610.69		20
			AS OF 4-6-70				
04/13	700		CONTROL DATA CORP - DELAWARE-	48 7/8	34,266.61		20
04/13	800		CONTROL DATA CORP - DELAWARE-	49 1/8	39,361.84		20
04/13	1,000		MEMOREX CORP	115 1/4	115,335.50		20
04/14			TRF TO ADJ	JRL		1,127.57	20
04/14			TRF TO ADJ	JRL		3,830.22	20
04/14		300	CONTROL DATA CORP - DELAWARE-	50 1/8	15,057.30		20
04/14		300	CONTROL DATA CORP - DELAWARE-	50 1/8	15,057.30		20
04/14		500	CONTROL DATA CORP - DELAWARE-	50 1/8	25,095.50		20
04/14		200	CONTROL DATA CORP - DELAWARE-	50 1/8		10,007.59	20
04/14		1000	CONTROL DATA CORP - DELAWARE-	49 3/4		47,663.00	20
04/14	500		FAIRCHILD CAMERA & INSTRUMENT	72 3/8	36,220.50		20
04/14		100	FAIRCHILD CAMERA & INSTRUMENT	72		7,191.25	20
04/14		400	FAIRCHILD CAMERA & INSTRUMENT	71 3/4		28,665.02	20
04/14	500		MEMOREX CORP	116	58,035.25		20
04/14		100	MEMOREX CORP	115 3/4		11,503.69	20
04/14		100	MEMOREX CORP	116 1/8		11,603.71	20
04/14		100	MEMOREX CORP	116 3/4		11,665.71	20
04/14		300	MEMOREX CORP	116		34,772.15	20
04/14		900	MEMOREX CORP	116 1/2		104,766.45	20
04/14	200		POLAROID CORP	90 3/8	18,080.20		20
04/14	300		POLAROID CORP	90 1/8	27,057.30		20
04/14		500	POLAROID CORP	90		44,950.10	20
04/14	1,000		R J REYNOLDS TOBACCO CO	39 1/2	39,575.30		20
04/15			TRF TO ADJ	JRL		130.95	20
04/15		100	CONTROL DATA CORP - DELAWARE-	50 1/8		5,003.79	20

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ADDITIONAL DEFENDANTS' EXHIBIT GG. FINLEY, KUMBLE E 1027

PERIOD ENDING		ACCOUNT	R.R.	PAGE
4-24-70	32	97-20901	002	3
LAST STMT.		S.S./I.D. NO.		
03-26-70	14921			

901 ACCOUNT
ATTN MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS

NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

8 HANOVER SQUARE TELEPHONE (212) 944-6300
NEW YORK, N.Y. 10004 CABLE ADDRESS "NEWBROHEND," N.Y.

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DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED	ACCT TYPE
04/15		1800	CONTROL DATA CORP - DELAWARE-	50		89,843.40	20
04/15		500	R J REYNOLDS TOBACCO CO	39		19,457.61	20
04/15		500	R J REYNOLDS TOBACCO CO	39 1/4		19,582.60	20
04/17			TRF TO ADJ	JRL		591.89	20
04/20	500		FAIRCHILD CAMERA & INSTRUMENT	69 3/4	34,915.50		20
04/20	300		KENTUCKY FRIED CHICKEN -DEL-	24	7,222.59		20
04/20	600		KENTUCKY FRIED CHICKEN -DEL-	23 7/8	14,370.18		20
04/20	100		MEMOREX CORP	115 1/2	11,557.05		20
04/20	700		MEMOREX CORP	115 5/8	80,986.85		20
04/20		800	MEMOREX CORP	114 1/4		91,325.77	20
04/20	500		NATIONAL CASH REGISTER CO	131 1/2	65,792.77		20
04/20	500		POLAROID CORP	93 3/8	46,720.00		20
04/20	500		XEROX CORP	86 1/2	43,290.50		20
04/21			INTEREST 9 THR04/20/70	INT	121.99		20
04/21		1100	CONTROL DATA CORP - DELAWARE-	JRL		51,632.39	20
			TRF TO 1 10 5				
04/21	100		INTL BUSINESS MACHINES CORP	325 1/2	32,559.19		20
04/21	200		INTL BUSINESS MACHINES CORP	325 1/2	65,118.30		20
04/21	300		INTL BUSINESS MACHINES CORP	326	97,827.49		20
04/21	500		INTL BUSINESS MACHINES CORP	322	161,038.25		20
04/21	500		INTL BUSINESS MACHINES CORP	323 3/4	161,913.25		20
04/21	500		INTL BUSINESS MACHINES CORP	324	162,045.75		20
04/21		100	INTL BUSINESS MACHINES CORP	322 1/2		32,259.70	20
04/21		400	INTL BUSINESS MACHINES CORP	322		128,758.62	20
04/21		500	INTL BUSINESS MACHINES CORP	325		162,446.50	20
04/21		100	KENTUCKY FRIED CHICKEN -DEL-	23 7/8		2,379.05	20
04/21		500	POLAROID CORP	93 1/2		46,706.08	20
04/21	500		XEROX CORP	83 1/2	41,783.00		20
04/21		500	XEROX CORP	84		41,956.16	20
04/22	1000		AMPEX CORP	22 1/8	22,200.30		20
04/22	2000		AMPEX CORP	22 3/8	44,900.60		20
04/22	1100		CONTROL DATA CORP - DELAWARE-	47 7/8	52,747.53		20
04/22	500		FAIRCHILD CAMERA & INSTRUMENT	64 3/4	32,408.00		20
04/22		100	FAIRCHILD CAMERA & INSTRUMENT	65 1/4		6,516.26	20
04/22		400	FAIRCHILD CAMERA & INSTRUMENT	65		25,969.08	20
04/22	100		INTL BUSINESS MACHINES CORP	323 1/8	32,320.12		20
04/22	200		INTL BUSINESS MACHINES CORP	326 1/4	65,268.30		20

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ADDITIONAL DEFENDANTS'
FINLEY, KUMBLE EXHIBIT GG.

E 1028

PERIOD ENDING	ACCOUNT	R.R.	PAGE
LAST STMT. 12-31-70	32 97-03301	993	11
06-26-71	15260	S.E.C. I.D. NO.	

901 ACCOUNT
ATTN: MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS

NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

9 HANOVER SQUARE
NEW YORK, N.Y. 10004

TELEPHONE (212) 944-8300
CABLE ADDRESS "NEWBROHEND," N.Y.

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DATE	BOUGHT, RECEIVED OR LOPS	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
05 22		1000	FAIRCHILD CAMERA & INSTRUMENT	36 1/2		36,415.20
05 22	100		INTL BUSINESS MACHINES CORP	263 1/4	26,332.65	
05 22	100		INTL BUSINESS MACHINES CORP	263 1/2	26,357.65	
05 22	100		INTL BUSINESS MACHINES CORP	263 3/4	26,382.65	
05 22	100		INTL BUSINESS MACHINES CORP	265	26,507.65	
05 22	100		INTL BUSINESS MACHINES CORP	268 1/8	26,820.12	
05 22	200		INTL BUSINESS MACHINES CORP	265 1/4	53,065.30	
05 22	200		INTL BUSINESS MACHINES CORP	265 1/4	53,065.30	
05 22	200		INTL BUSINESS MACHINES CORP	266	53,215.30	
05 22	400		INTL BUSINESS MACHINES CORP	268	107,230.50	
05 22	500		INTL BUSINESS MACHINES CORP	268	134,038.25	
05 22	500		INTL BUSINESS MACHINES CORP	278	139,369.75	
			AS OF 5-19-70			
05 22		500	INTL BUSINESS MACHINES CORP	278		139,369.00
			AS OF 5-19-70			
			CXL PREV BUY			
05 22		500	INTL BUSINESS MACHINES CORP	265 1/4		132,574.00
05 22		500	INTL BUSINESS MACHINES CORP	267 1/2		133,699.00
05 22		500	INTL BUSINESS MACHINES CORP	267 1/2		133,699.00
05 22		500	INTL BUSINESS MACHINES CORP	268 1/2		134,199.00
05 22		500	INTL BUSINESS MACHINES CORP	269		134,449.00
05 22		500	INTL BUSINESS MACHINES CORP	270		134,949.00
05 22	100		MEMOREX CORP	78	7,800.00	
			AS OF 5-19-70			
05 22	200		MEMOREX CORP	77 1/2	15,513.20	
05 22	300		MEMOREX CORP	77 3/4	23,344.00	
05 22	500		MEMOREX CORP	79	39,533.00	
05 22		1100	MEMOREX CORP	82		90,103.50
05 22		1000	POLAROID CORP	71 3/4		71,662.50
05 22		1000	POLAROID CORP	71 3/4		71,664.50
05 22		2000	XEROX CORP	15 3/8		30,616.30
05 25	100		INTL BUSINESS MACHINES CORP	W/E		
			TKF TO ADJ			
05 25	100		INTL BUSINESS MACHINES CORP	265 1/2	26,557.65	
05 25	100		INTL BUSINESS MACHINES CORP	266	26,607.65	
05 25	100		INTL BUSINESS MACHINES CORP	266 1/2	26,699.15	
05 25	100		INTL BUSINESS MACHINES CORP	267 3/4	26,782.65	

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E 1029

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT GG.

PERIOD ENDING	ACCOUNT	R.R.	PAGE
LAST STMT. 12-24-71	97-28901 00?	S.V.I.D. NO.	11
04-24-72	15280		

901 ACCOUNT
ATTN MR CHARLES GRUSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS
NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

9 HANOVER SQUARE
NEW YORK, N.Y. 10004
TELEPHONE (212) 944-8300
CABLE ADDRESS "NEWBROHEND," N.Y.

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
05 20		500	INTL BUSINESS MACHINES CORP	277 3/4		138,923.97
05 20		500	INTL BUSINESS MACHINES CORP	278		138,946.97
05 20		500	INTL BUSINESS MACHINES CORP	278 1/4		139,073.47
05 20				40 7/8	4,093.85	
05 20	100		ITEK CORP	40 3/4	16,925.40	
05 20	400		ITEK CORP	40 1/2		20,206.54
05 20		500	ITEK CORP	72 1/4	72,316.00	
05 20	1000		MEMOREX CORP	73		72,912.54
05 20		1000	MEMOREX CORP	70	7,006.60	
05 20	100		POLAROID CORP	70 1/4	7,033.10	
05 20	100		POLAROID CORP	70 3/4	7,081.60	
05 20	100		POLAROID CORP	70 1/2	21,174.30	
05 20	300		POLAROID CORP	71	28,426.40	
05 20	400		POLAROID CORP	69 7/8	34,970.50	
05 20	500		POLAROID CORP	70	35,033.00	
05 20	500		POLAROID CORP	71 7/8		7,178.70
05 20		100	POLAROID CORP	69 3/4		34,831.30
05 20		500	POLAROID CORP	70 1/8		35,018.74
05 20		500	POLAROID CORP	71 3/4		35,891.20
05 20		50	POLAROID CORP	U/L	15,070.40	
05 20	1000		TELEX CORP			
			TEF TO ADJ	14 3/8	7,222.03	
05 20	500		TELEX CORP	14 1/2	21,855.43	
05 20	1500		TELEX CORP	14 1/8	20,303.90	
05 20	1000		TELEX CORP	14 1/2		2,000.00
05 20		200	TELEX CORP	14 5/8		24,204.77
05 20		1600	TELEX CORP	INT	1,354.18	
05 21			INTEREST 9 THRU 5/20/72	274	27,409.15	
05 21	100		INTL BUSINESS MACHINES CORP	273 1/2	54,718.30	
05 21	200		INTL BUSINESS MACHINES CORP	273 3/4	54,768.30	
05 21	200		INTL BUSINESS MACHINES CORP	263	131,545.75	
05 21	500		INTL BUSINESS MACHINES CORP	263 3/8	132,725.75	
05 21	500		INTL BUSINESS MACHINES CORP	260		26,589.81
05 21		100	INTL BUSINESS MACHINES CORP	265 3/4		106,259.27
05 21		400	INTL BUSINESS MACHINES CORP	69 7/8	41,971.50	
05 21	600		POLAROID CORP	69 5/8	69,706.00	
05 21	1000		POLAROID CORP	30 1/2	30,561.50	
05 22	1000		FAIRCHILD CAMERA & INSTRUMENT			

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FILE COPY

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT GG.

E 1030

PERIOD ENDING	ACCOUNT	R.R.	PAGE
LAST STMT. 04-24-70	32 67-28401	047	14
04-24-70	19263	S.V.I.D. NO.	

901 ACCOUNT
ATTN MR. CHARLES GRUSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.
MEMBERS
NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

9 HANOVER SQUARE, NEW YORK, N.Y. 10004
TELEPHONE (212) 944-6300
CABLE ADDRESS "NEWARDHEND," N.Y.

YOU MAY HAVE RECEIVED CONFIRMATION FOR TRADES WHICH DO NOT APPEAR ON YOUR STATEMENT. HOWEVER, IF THE SETTLEMENT DATE OF TRADE AS SHOWN ON THE CONFIRMATION WAS LATER THAN THE DATE THAT APPEARS AT THE TOP OF YOUR STATEMENT THE TRADE WILL APPEAR ON YOUR NEXT REGULAR MONTHLY STATEMENT.

PLEASE ADDRESS ALL COMMUNICATIONS TO THE FIRM AND NOT TO INDIVIDUALS AND KINDLY MENTION YOUR ACCOUNT NUMBER.

PLEASE PRESERVE THIS STATEMENT FOR INCOME TAX PURPOSES

E. & O.E. WE MUST BE ADVISED IMMEDIATELY OF ANY ERRORS OR OMISSIONS.

DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
05 14	200		POLAROID CORP	72 3/4	14,563.20	
05 14	300		POLAROID CORP	73	21,919.80	
05 14	400		POLAROID CORP	73 1/4	29,326.40	
05 14	100		POLAROID CORP	72 3/4	7,281.60	
05 14		100	POLAROID CORP	74 3/8		7,428.75
05 14		900	POLAROID CORP	74 1/2		66,471.25
05 14		2000	XEROX CORP	81 1/4		162,324.75
05 15	1000		FAIRCHILD CAMERA & INSTRUMENT	40	40,063.50	
05 15		500	FAIRCHILD CAMERA & INSTRUMENT	40 1/2		20,206.25
05 15		500	FAIRCHILD CAMERA & INSTRUMENT	40 3/4		20,331.25
05 15	100		MEMOREX CORP	75 3/4	7,581.00	
05 15	500		MEMOREX CORP	75 3/8	37,720.50	
05 15		300	MEMOREX CORP	76		22,773.75
05 15		300	MEMOREX CORP	76 1/4		22,848.75
05 18	300		INTL BUSINESS MACHINES CORP	283 1/4	85,002.45	
05 18	200		ITEK CORP	41 5/8	8,340.40	
05 18	500		ITEK CORP	41 1/4	20,669.50	
05 18	500		ITEK CORP	41 5/8	20,853.00	
05 18	500		MEMOREX CORP	76 7/8	38,476.00	
05 19	700		TELEX CORP	14 3/8	10,132.09	
05 19	1300		TELEX CORP	14 1/2	18,923.45	
05 19		400	TELEX CORP	15 1/8		6,023.27
05 19		500	TELEX CORP	15		7,466.60
05 19		1100	TELEX CORP	14 7/8		16,289.02
05 19	200		INTL BUSINESS MACHINES CORP	280 1/2	56,115.30	
05 19	200		INTL BUSINESS MACHINES CORP	281 1/2	56,315.30	
05 19	200		INTL BUSINESS MACHINES CORP	282 3/8	56,490.30	
05 19	200		INTL BUSINESS MACHINES CORP	283 1/2	56,715.30	
05 19	500		INTL BUSINESS MACHINES CORP	278 1/2	139,288.65	
05 19	500		INTL BUSINESS MACHINES CORP	280 5/8	140,350.75	
05 19		100	INTL BUSINESS MACHINES CORP	283		28,289.78
05 19		200	INTL BUSINESS MACHINES CORP	280 3/4		56,129.57
05 19		200	INTL BUSINESS MACHINES CORP	287 1/2		57,479.55
05 19		300	INTL BUSINESS MACHINES CORP	282 3/4		84,795.35
05 19		300	INTL BUSINESS MACHINES CORP	287		86,069.32
05 19		500	INTL BUSINESS MACHINES CORP	280 1/4		140,073.90
05 19		500	INTL BUSINESS MACHINES CORP	280 1/2		140,158.94

FILE COPY

E 1031

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT GG.

PERIOD ENDING	ACCOUNT	R.R.	PAGE
5-27-71	32 97-E64G1	007	11
LAST STMT.	S.E.C. I.D. NO.		
06-24-70	19260		

901 ACCOUNT
ATTN MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS

NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

9 HANOVER SQUARE
NEW YORK, N.Y., 10004

TELEPHONE (212) 344-6300
CABLE ADDRESS "NEWBRONCHO," N.Y.

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DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED	
05 00		500	TELEX CORP	97		48,456.03	2
05 00		500	TELEX CORP	100		49,953.75	2
05 00		500	TELEX CORP	100		49,953.75	2
05 00		600	TELEX CORP	99		59,347.21	2
05 00		700	TELEX CORP	101		70,635.25	2
05 11	1000		FAIRCHILD CAMERA & INSTRUMENT	47 1/2	47,563.50		2
05 11		100	FAIRCHILD CAMERA & INSTRUMENT	44 1/2		4,441.31	2
05 11		900	FAIRCHILD CAMERA & INSTRUMENT	46		41,521.77	2
05 11	100		INTL BUSINESS MACHINES CORP	288	28,807.65		2
05 11	200		INTL BUSINESS MACHINES CORP	287	57,415.35		2
05 11	500		INTL BUSINESS MACHINES CORP	282 1/2	141,295.75		2
05 11	500		INTL BUSINESS MACHINES CORP	283 1/2	141,795.75		2
05 11	500		INTL BUSINESS MACHINES CORP	287 1/2	143,788.25		2
05 11		200	INTL BUSINESS MACHINES CORP	287 1/2		57,479.55	2
05 11		300	INTL BUSINESS MACHINES CORP	287		86,069.34	2
05 11		300	INTL BUSINESS MACHINES CORP	288		86,387.34	2
05 11		500	INTL BUSINESS MACHINES CORP	283		141,448.75	2
05 11	100		MEMOREX CORP	75 3/4	7,581.60		2
05 11	200		MEMOREX CORP	70 1/8	14,038.20		2
05 11	200		MEMOREX CORP	75 1/2	15,113.20		2
05 11	300		MEMOREX CORP	66 1/2	19,969.80		2
05 11	500		MEMOREX CORP	68 3/4	34,408.00		2
05 11	500		MEMOREX CORP	68 3/4	34,418.00		2
05 11	700		MEMOREX CORP	75 3/8	52,808.70		2
05 11		100	MEMOREX CORP	69		6,891.27	2
05 11		100	MEMOREX CORP	69 1/2		6,941.27	2
05 11		100	MEMOREX CORP	69		6,891.27	2
05 11		100	MEMOREX CORP	69		6,891.27	2
05 11		100	MEMOREX CORP	69 1/2		6,941.27	2
05 11		100	MEMOREX CORP	70 3/4		7,066.23	2
05 11		200	MEMOREX CORP	70 1/2		14,082.91	2
05 11		500	MEMOREX CORP	77 1/2		38,706.24	2
05 11		500	MEMOREX CORP	78 1/4		39,081.24	2
05 11		700	MEMOREX CORP	70 1/4		49,113.81	2
05 11	100		POLAROID CORP	68 7/8	6,895.60		2
05 11	100		POLAROID CORP	73 1/2	7,350.60		2
05 11	200		POLAROID CORP	69 1/4	13,866.20		2

FILE COPY

ADDITIONAL DEFENDANTS' EXHIBIT GG.
FINLEY, KUMBLE

PERIOD ENDING	ACCOUNT	R.R.	PAGE
LAST STMT. 03-31-70	32 93-20431	09	1
04-24-70	S.S./I.D. NO.		

152.00

701 ACCOUNT
ATTN MR CHARLES GRUSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.,

MEMBERS

NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

9 HANOVER SQUARE, NEW YORK, N.Y. 10004 — TELEPHONE (212) 944-9300 — CABLE ADDRESS "NEWBROHEND," N.Y.

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DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
04 24			OPENING BALANCE CASH ACCOUNT			72.00
04 13		200	MEMOREX CORP	71 1/4		14,232.51
04 14	200		MEMOREX CORP	D/E	14,232.51	
			TRF 1-2			
05 15	1,000		TELEX CORP	19	19,070.30	
05 20		1,000	TELEX CORP	D/E		19,070.30
			TRF TO ADJ			72.00
04 24			CLOSING BALANCE CASH ACCOUNT			
					****	****
			OPENING BALANCE MARGIN ACCOUNT		136,527.00	
04 27	100		INTL BUSINESS MACHINES CORP	345 1/4	34,534.15	
04 27	300		INTL BUSINESS MACHINES CORP	324	97,227.00	
04 27	60		INTL BUSINESS MACHINES CORP	325	19,505.00	
04 27	200		LEASCO DATA PROCESSING EQUIP	14 1/4	2,914.00	
04 27	1,500		LEASCO DATA PROCESSING EQUIP	14 3/4	20,671.00	
04 27		200	MEMOREX CORP	108 1/2		21,681.46
04 27		300	MEMOREX CORP	108		32,372.46
04 27		500	MEMOREX CORP	107 3/4		53,811.22
04 27			MEMOREX CORP	107 3/4	53,861.22	
04 27		500	MEMOREX CORP			
			AS OF 4-20-70			
			CXL PREV SELL			
04 27		500	MEMOREX CORP	107 3/4	53,811.22	
			AS OF 4-20-70			
			CXL PREV SELL			53,811.61
04 27		500	MEMOREX CORP	107 3/4		
			AS OF 4-21-70			
		500	MEMOREX CORP	107 3/4		
			AS OF 4-20-70			
04 27		500	TELEX CORP	112 1/4		54,061.00
04 27		500	BURROUGHS CORP	140		67,933.39
04 28		1,000	CLARO CORP	14 7/8		23,093.12
04 28	1,600		CLARO CORP	14 7/8	23,093.12	
			AS OF 9-21-70			
			CXL PREV SELL			53,097.00
04 28		500	FAIRCHILD CAMERA & INSTRUMENT	61 1/2		

FILE COPY

1033

ADDITIONAL DEFENDANTS' EXHIBIT GG.
FINLEY, KUMBLE

PERIOD ENDING	ACCOUNT	R.R.	PAGE
LAST STMT. 04-24-70	32 47 26501 04 2 S.T.D. NO. 15251		

701 ACCOUNT
ATTN. MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS
NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

9 HANOVER SQUARE
NEW YORK, N.Y. 10004
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DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
04		500	FAIRCHILD CAMERA & INSTRUMENT	67 1/2	33,647.34	
			AS OF 4-21-70			
			CXL PREV SELL			33,796.34
	500		FAIRCHILD CAMERA & INSTRUMENT	67 1/2		
04			AS OF 4-21-70			33,914.70
	100		INTL BUSINESS MACHINES CORP	324 1/4		32,414.70
	300		INTL BUSINESS MACHINES CORP	324 1/2		97,356.00
	400		INTL BUSINESS MACHINES CORP	324 3/4		129,986.00
	500		INTL BUSINESS MACHINES CORP	324 3/4		162,311.50
	700		INTL BUSINESS MACHINES CORP	324		226,786.00
04			INTL BUSINESS MACHINES CORP	324 3/4	162,386.50	
04		500	AS OF 4-21-70			
			CXL PREV SELL			162,311.50
04			INTL BUSINESS MACHINES CORP	324 3/4		
			AS OF 4-21-70			27,206.50
04				54 1/2		27,331.00
		500	ITEK CORP	54 3/4		54,775.00
		400	LEASCO DATA PROCESSING EQUIP	15		60,775.00
		400	LEASCO DATA PROCESSING EQUIP	14 1/8		
			AS OF 4-21-70			24,706.50
		500	MOHAWK DATA SCIENCES CORP	49 1/2		44,081.50
		500	MOHAWK DATA SCIENCES CORP	45 3/4		
04			TELEX CORP	113 3/4	11,382.50	
04		100	TELEX CORP	114 3/4	11,479.50	
04		100	TELEX CORP	114	11,501.50	
04		100	TELEX CORP	114.	11,488.50	
04		100	TELEX CORP	116 1/4	11,635.57	
04		100	TELEX CORP	118 1/2	11,857.05	
04		200	TELEX CORP	113	22,614.10	
04		200	TELEX CORP	116 1/8	23,239.10	
04		400	TELEX CORP	113 1/2	45,434.20	
04		400	TELEX CORP	116 3/8	46,578.20	
04		100	TELEX CORP	116 1/4	11,632.05	
			AS OF 4-21-70			11,635.57
04	100		TELEX CORP	116 1/4		
			AS OF 4-21-70			
			CXL PREV BUY			

FILE COPY

E 1034

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT GG.

PERIOD ENDING	ACCOUNT	R.R.	PAGE
5-31-70	32 97-20701	09	3
LAST STMT.	S.S./I.D. NO.		
04-24-70	13252		

POL ACCOUNT
ATTN MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

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NEW YORK STOCK EXCHANGE
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DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED	SE. EXCH.
04 28		100	TELEX CORP	110 5/8		11,053.21	20
04 28		300	TELEX CORP	115		34,466.09	20
04 28		400	TELEX CORP	115 1/4		46,062.87	20
04 28		500	TELEX CORP	122 3/4		61,336.52	20
04 28	300		TELEX CORP	115	34,466.09		20
			AS OF 4-21-70				
			PREV SELL				
04 28		300	TELEX CORP	145		34,467.16	20
			AS OF 4-21-70				
04 28		500	XEROX CORP	87 1/2		43,706.14	20
04 29	1000		FAIRCHILD CAMERA & INSTRUMENT	62 3/4	62,812.50		20
04 29		1000	FAIRCHILD CAMERA & INSTRUMENT	63		62,937.74	20
04 29	300		INTL BUSINESS MACHINES CORP	314	94,222.62		20
04 29	700		INTL BUSINESS MACHINES CORP	314	219,855.58		20
04 29		100	INTL BUSINESS MACHINES CORP	314 1/4		31,414.74	20
04 29		300	INTL BUSINESS MACHINES CORP	314		94,185.18	20
04 29		600	INTL BUSINESS MACHINES CORP	313 1/2		188,098.53	20
04 29	500		MEMOREX CORP	100 1/4	50,100.29		20
04 29	500		MEMOREX CORP	100 2/3	50,347.79		20
04 29		100	MEMOREX CORP	99 1/2		9,941.25	20
04 29		300	MEMOREX CORP	100 1/4		30,067.34	20
04 29		600	MEMOREX CORP	99 1/3		59,602.01	20
04 29	100		POLAROID CORP	86 7/8	43,470.50		20
04 29		500	POLAROID CORP	86 7/8		43,232.63	20
04 29	100		TELEX CORP	106 1/4	10,632.23		20
04 29	100		TELEX CORP	106 5/8	10,684.53		20
04 29	100		TELEX CORP	108 1/2	10,851.03		20
04 29	100		TELEX CORP	109	10,907.09		20
04 29	100		TELEX CORP	109 1/4	10,932.09		20
04 29	100		TELEX CORP	109 1/2	10,957.09		20
04 29	200		TELEX CORP	108 3/4	21,764.18		20
04 29	300		TELEX CORP	106 1/2	31,971.19		20
04 29	300		TELEX CORP	107 1/2	32,271.19		20
04 29	400		TELEX CORP	107 3/8	42,978.20		20
04 29	400		TELEX CORP	108 1/4	43,328.20		20
04 29	500		TELEX CORP	109	52,535.25		20
04 29	500		TELEX CORP	105 1/4	52,660.25		20

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E 1035

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT GG.

PERIOD ENDING		ACCOUNT	R.R.	PAGE
6-26-70	32	17-20901	002	11
LAST STMT.		S.S./I.D. NO.		
05-29-70		14786		

001 ACCOUNT
ITF MF CHARLES GROSS
SOLD ALL MTL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS
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06 10		100	FAIRCHILD CAMERA & INSTRUMENT	34 3/8		3,432.41
			SHORT			
06 10		900	FAIRCHILD CAMERA & INSTRUMENT	34 3/4		31,229.37
			SHORT			
06 10		1000	FAIRCHILD CAMERA & INSTRUMENT	32 3/4		32,699.34
			SHORT			
06 10		1000	FAIRCHILD CAMERA & INSTRUMENT	32 3/4		32,699.34
			SHORT			
06 10		2000	FAIRCHILD CAMERA & INSTRUMENT	33 1/2		64,858.96
06 10		2000	FAIRCHILD CAMERA & INSTRUMENT	35 3/4		71,399.57
			SHORT			
06 10	100		CNTL BUSINESS MACHINES CORP	278 3/4	27,875.00	
06 10	100		CNTL BUSINESS MACHINES CORP	279 1/8	27,912.50	
06 10	100		CNTL BUSINESS MACHINES CORP	279 1/4	27,925.00	
06 10	1000		CNTL BUSINESS MACHINES CORP	278 1/2	278,500.00	
06 10	100		LTV-TEMCO VOUGHT INC	17 1/8	1,712.50	
06 10	700		LTV-TEMCO VOUGHT INC	17 1/4	12,075.00	
			AS OF 6-3-70			
06 10	1900		LTV-TEMCO VOUGHT INC	17 1/4	32,775.00	
06 10		700	LTV-TEMCO VOUGHT INC	17 5/8		12,311.00
			SHORT			
06 10		1000	LTV-TEMCO VOUGHT INC	15 5/8		15,587.18
			SHORT			
06 10		1000	LTV-TEMCO VOUGHT INC	17 7/8		17,837.14
			AS OF 6-3-70 SHORT			
06 10		2000	LTV-TEMCO VOUGHT INC	18 1/2		36,924.60
			SHORT			
06 10		2000	LTV-TEMCO VOUGHT INC	15 1/2		30,924.38
			SHORT			
06 10	100		MEMOREX CORP	79 3/4	7,975.00	
06 10	100		MEMOREX CORP	81 5/8	8,162.50	
06 10		100	MEMOREX CORP	81 5/8		8,162.50
			AS OF 6-3-70			
			CXL PREV BUY			
06 10	100		MEMOREX CORP	81 3/4	8,175.00	
			AS OF 6-3-70			
06 10	300		MEMOREX CORP	81 3/8	24,412.50	

FILE COPY

E 1036

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT GG.

PERIOD ENDING		ACCOUNT	R.R.	PAGE
6-26-70	32	97-20901	002	10
LAST STMT.		S.S./I.D. NO.		
05-29-70		14705		

001 ACCOUNT
ATTN MR CHARLES GROSS
HOLD ALL MAIL IN OFFICE

IN ACCOUNT WITH

Newburger, Loeb & Co.

MEMBERS
NEW YORK STOCK EXCHANGE
AND OTHER PRINCIPAL EXCHANGES

5 HANOVER SQUARE
NEW YORK, N.Y. 10004

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DATE	BOUGHT, RECEIVED OR LONG	SOLD, DELIVERED OR SHORT	DESCRIPTION	PRICE OR ENTRY	AMOUNT CHARGED	AMOUNT CREDITED
06 10	100		CONTROL DATA CORP - DELAWARE-	46 1/2	4,650.00	
06 10	100		CONTROL DATA CORP - DELAWARE-	47	4,700.00	
06 10	200		CONTROL DATA CORP - DELAWARE-	46 3/4	9,350.00	
06 10	500		CONTROL DATA CORP - DELAWARE-	46 7/8	23,437.50	
06 10	900		CONTROL DATA CORP - DELAWARE-	46 3/8	41,737.50	
06 10	1000		CONTROL DATA CORP - DELAWARE-	40 5/8	40,625.00	
06 10	1000		CONTROL DATA CORP - DELAWARE-	45 3/4	45,750.00	
06 10	1000		CONTROL DATA CORP - DELAWARE-	47	47,000.00	
06 10		200	CONTROL DATA CORP - DELAWARE-	42 1/8		8,414.00
			SHORT			
06 10		200	CONTROL DATA CORP - DELAWARE-	44 1/8		8,814.00
			SHORT			
06 10		300	CONTROL DATA CORP - DELAWARE-	44		13,194.75
			SHORT			
06 10		500	CONTROL DATA CORP - DELAWARE-	44 1/8		22,037.50
			SHORT			
06 10		800	CONTROL DATA CORP - DELAWARE-	42 1/4		33,759.00
06 10		1000	CONTROL DATA CORP - DELAWARE-	42		41,944.00
			SHORT			
06 10		1000	CONTROL DATA CORP - DELAWARE-	43 3/8		43,324.00
06 10		1000	CONTROL DATA CORP - DELAWARE-	46 1/2		46,449.00
06 10			SHORT			
			DATA PROCESSING FINANCIAL &	13 1/4	3,975.00	
06 10	300		GENERAL CORP			
			DATA PROCESSING FINANCIAL &	13 1/8	9,187.50	
06 10	700		GENERAL CORP			11,962.50
			DATA PROCESSING FINANCIAL &	14		
06 10		1000	GENERAL CORP			
			SHORT			
			FAIRCHILD CAMERA & INSTRUMENT	31 5/8	3,162.50	
06 10	100		FAIRCHILD CAMERA & INSTRUMENT	31 7/8	3,187.50	
06 10	300		FAIRCHILD CAMERA & INSTRUMENT	34 1/4	10,275.00	
06 10	500		FAIRCHILD CAMERA & INSTRUMENT	31 3/4	15,875.00	
06 10	900		FAIRCHILD CAMERA & INSTRUMENT	34 3/8	29,500.00	
06 10	1300		FAIRCHILD CAMERA & INSTRUMENT	32	41,600.00	
06 10	1900		FAIRCHILD CAMERA & INSTRUMENT	35	66,500.00	
06 10	2000		FAIRCHILD CAMERA & INSTRUMENT	35 1/4	70,500.00	

FILE COPY

DEFENDANT'S
FINLEY
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
HH 19

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT HH.

E 1037

February 8, 1971

Hon. Vincent A. Lupiano
Special Term, Part II
Supreme Court of the State of New York
New York County Courthouse
New York, New York

Re: Newburger, Loeb & Co.;
Our File # 1528.003

Dear Sir:

We are general counsel to Newburger, Loeb & Co., a limited partnership. We understand that there may be presented to Your Honor this week an ex parte request for a temporary restraining order or an order to show cause with a stay against a proposed transfer of the assets of Newburger, Loeb & Co. to a corporation, Newburger, Loeb & Co., Inc. We respectfully request that, in the event that such an application be submitted, we be permitted to appear to oppose the application on the ground that it should not be granted. This firm will accept service of papers on behalf of Newburger, Loeb & Co. with respect to the foregoing.

Very truly yours,

FINLEY, KUMBLE, UNDERBERG, PERSKY & ROTH

MAB.be

Michael A. Bamberger

BY HAND

cc to: Charles Laventhol, Chief Clerk

DEFENDANT'S
FINLEY
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT II.

PEAT, MARWICK, MITCHELL & CO.
CERTIFIED PUBLIC ACCOUNTANTS
345 PARK AVENUE
NEW YORK, NEW YORK 10022

E 1038

January 11, 1971

PRIVATE

Mr. Paul Risher
Newburger, Loeb & Company
5 Hanover Square
New York, New York 10004

Dear Mr. Risher:

Relative to the examination which we are to conduct for Newburger, Loeb & Co. as of December 31, 1970, we will require proper directives for the following items before we can properly calculate the partners' capital accounts as of December 31, 1970:

1. For those partners that retired during the year, counsel's opinion as to what constitutes the effective dates of resignation of these partners.

2. The allocation and disposition of 1968, 1969 and 1970 "back office loss accounts" to partners and/or former partners.

3. The nature of the items which will be included in the "back office loss accounts".

4. The allocation of the operating results for the year ended December 30, 1970 to remaining partners, partners who withdrew during the year and partners who entered the firm during the year and who may or may not have withdrawn during the year (both general and/or limited).

5. The allocation of fluctuation of the market value of the exchange memberships owned by the firm for all of the periods affected during the year.

6. The status and proper balances due to or from the Estate of Morris Newburger.

7. The distribution to partners for costs incurred in the cancellation of lease commitments.

8. The distribution to partners of unamortized ACS conversion costs.

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT II.

E 1039

9. The distribution to partners of reserves for bad debts, uncollected dividends, unlocated security differences, losses on conversion to W. E. Hutton, suspense accounts, etc.

10. The distribution to partners of unamortized leasehold improvements on offices or office space no longer used or useable.

11. The distribution to partners of undepreciated furniture, fixtures and equipment net of salvage no longer used or useable.

12. The distribution to partners of unrealized gains or losses on investments in securities.

13. The distribution to partners of the investments in subsidiaries; - New Loeb Sports Enterprises, Inc. and ENEL Holding Co.

14. The distribution to partners of costs incurred by way of censures and/or fines.

We believe that you should have your counsel's advice on each of the above items and also their advice as to who can properly make or approve these decisions.

Very truly yours,

PEAT, MARWICK, MITCHELL & CO.

Richard V. McManus

Richard V. McManus, Partner

RVMcM:RB

TIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT J

DEFENDANT'S
FINLEY
EXHIBIT
U. S. DIST. COURT
S. D. N. Y.
JJ E

Loeb & Co.

e · American Stock Exchange
ERVICE SINCE 1899

E 1040
OFFICES
NEW YORK
LOS ANGELES

RE · NEW YORK, N. Y. 10004 · (212) 944-6300

January 18, 1971

Peat, Marwick, Mitchell & Co.
345 Park Avenue
New York, New York 10022

Attention: Richard V. McManus

Gentlemen:

We are writing in response to your letter to us dated January 11, 1971. We shall respond to the items you set forth in that letter by numbered paragraphs matching the numbered items in your letter.

1. Attached hereto as Schedule "1" is a list of the partners of Newburger, Loeb & Co. who retired during 1970, together with the effective dates of their resignations. You should note that the date used in computing the interest of a former partner does not necessarily coincide with the effective date of his retirement, it being the last day of the month during which the effective date occurs.

Where is the schedule

2. We enclose, for your information, a copy of an agreement regarding "back office" losses dated May 7, 1970. You will note that the agreement specifically provides, in numbered paragraphs 1, 2 & 3, the method of allocation and disposition of such losses.

3. All items currently shown on cage error accounts other than accounts attributable to "write down of seats." We will be glad to review any specific items concerning which you have doubt.

4. No part of the operating losses for the year ended December 30, 1970 should be allocated to limited partners, either those who withdrew during the year or those who remained as such at the end of the year. Allocation of the operating losses for the year ended December 30, 1970 to the general partners who remain shall be pro rata in accordance with their respective interests. Allocation of operating losses for the year ended December 31, 1970 to general partners who withdrew during the year is computed by multiplying the net loss for the year by the fraction whose numerator is the gross income for the year to the effective date of withdrawal and whose denominator is the gross income for the year.

5. The allocation of the fluctuation of the market value of exchange memberships is borne by all of the general partners in the proportions in which the losses of the partnership are borne by them as determined by the formula in item 4 above.

6. Effective November 30, 1970, the Estate of Morris Newburger was entitled to withdraw its capital as a limited partner of Newburger, Loeb & Co. This status is subject to certain agreements set forth in an agreement dated December 31, 1970 between Newburger, Loeb & Co. and Newburger, Loeb & Co., Inc., under which it is contemplated that the Estate of Morris Newburger will receive Subordinated Convertible Notes and Series A Preferred Stock in an aggregate principal amount equal to the capital as of November 30, 1970 which the Estate was entitled to withdraw. After you have calculated the gross amount due the Estate as of November 30, 1970, there will have to be deducted therefrom, to determine the net amount due, a sum equal to 1/24th of the partnership share of the Estate of the losses attributable to the 1968 partnership.

7. All of the costs incurred in the cancellation of the lease commitments involving the lease of space in 1 New York Plaza are to be allocated to the 1970 partnership and charged to the general partners ratably as their interest appear.

8. To the extent that the unamortized ACS conversion costs are written off for the year ended December 30, 1970, each of the general partners shall bear his proportionate share thereof.

9. The allocation of reserves for bad debts, uncollected dividends, unlocated security differences, losses on conversion to W. E. Hutton, suspense accounts and the like, should be allocated to the general partners of the 1970 partnership ratably in proportion to their prospective interest except for such amounts as are properly attributable to the 1968-1969 "back office" losses.

10. Unamortized leasehold improvements on offices to the extent written off for the year ended December 31, 1970 and office space no longer used or usable should be charged to the general partners of the 1970 partnership in proportion to their respective interests.

11. It is not contemplated that the value of undepreciated furniture and fixtures and equipment net of salvage no longer used or usable will be charged to the general partners of the 1970 partnership unless it is deemed desirable by you to write off all or any part thereof. In the event of such a

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT JJ.

January 18, 1971

E 1042

write-off, each of the general partners of the 1970 partnership should bear his proportionate part thereof. However, an agreement has been reached, pursuant to which no further write-offs will be made for 1970.

12. Unrealized gains or losses on securities in the Firm's investment and trading accounts are to be distributed among the partners in the same manner as realized profits or losses of the Firm.

13. New Loeb Sports Enterprises, Inc. is a wholly-owned subsidiary of the partnership and should be treated like any other asset of the partnership owned at the end of the fiscal year. The attached Schedule sets forth the ownership of ENEL Holding Co.

14. The $50,000 censure of Newburger, Loeb & Co. should be treated as a "back office" loss incurred during 1968-1969. (See item 2 above).

We hope the above gives you the information you require.

Very truly yours,

Newburger, Loeb & Co.

By:

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT JJ.

Oil & Gas Lease Partnerships.

E 1043

	1970 Quarterly Computation	Bob Stem Quit	Quarterly Computation
Fred Kayne	3/1/70	11/30/70	11/27/70
Ned Frank	1/1/69	"	11/27/70
Robert Theriot	3/1/70	12/28/70	11/27/70
John F Sethel	1/1/69	12/10/70	11/27/70
A. Roggenburg	1/1/69	12/25/70	11/27/70
Harold Richards	1/1/69	12/31/70	11/27/70
Charles Sloane	3/1/70	11/30/70	11/27/70
Benjamin Payer	1/1/69	2/28/70	2/28/70
Charles Gibson	1/1/69	9/30/70	9/30/70
John Thurston	1/1/69	2/28/70	2/28/70
Geo. F. Cornuff	1/1/69		7/30/70
Louis Bracken	3/1/70		7/30/70
Joseph Searles III	3/1/70		6/30/70

Prepared by Ron of PMM from Bob Stem Information 1/26/71

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

KK

ADDITIONAL DEFENDANTS' FINLEY, KUMBLE EXHIBIT KK.

4, 4

29-55

E 1044

January 22, 1971

Newburger, Loeb & Co.
5 Hanover Square
New York, New York 10004

Re: Reorganization

Gentlemen:

Reference is made to attorneys' agreement dated January 20, 1971.

I hereby confirm and ratify only so much of said agreement as is contained in paragraphs "2", "3", and "4" at pages 2 and 3. I do not confirm or ratify any other portions of the said agreement.

Accordingly, I agree to leave my capital at the risk of Newburger, Loeb until February 11, 1971.

This letter is without prejudice to my right to reject the plan of reorganization in the event any other limited partner does not consent to the plan and receives benefits and treatment not available to me.

Very truly yours,

Mabel Bleich

MB:mn

cc: Golenbock and Barell

ADDITIONAL DEFENDANT

KAYNE'S EXHIBITS

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT A.

LEGAL EXPENSES RE' GROSS ARBITRATION

E 1045

Legal Fee:

7/21/71	*Ervin, Cohen, & Jessup*	*$ 3,056.81*

Legal Fees:

Laventhal & Zicklin

9/29/72	*(inc. $124 - Arbitration Fee)*	*$ 1,480*
11/1/72		*360*
12/1/72		*1,560*
1/2/73		*1,090*
4/1/73		*2,990*
7/1/73		*2,410*
11/1/73		*1,350*
1/2/74		*1,050*
2/1/74		*1,050*
3/1/74		*750*
		$14,090.00

Arbitration Minutes

Benjamin Reporting Service

61

$ 703.00

$ 960.00

Merwick, Mitchell & Co.)

DEFENDANT'S
KAYNE
EXHIBIT
S. DIST. COURT
D. OF N. Y.

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT A.

E 1046

NEW YORK EXPENSE TO ARBITRATION FROM CALIFORNIA
These are out-of-pocket costs

	Fred Kayne	*Chuck Sloane*	*TOTAL*
December, 1972			
Airfare (Rountrip)	*$353*	*$353*	
Hotels ($40/day)	*160*	*160*	
Meals ($30/day)	*120*	*120*	
Misc. (Transporlation, etc.)	*40*	*40*	
	$673	*$673*	*$1,346*
March, 1972			
Airfare	*$353*	*$353*	
Hotel	*200*	*200*	
Meals	*150*	*150*	
Misc.	*50*	*50*	
	$673	*$673*	*$1,506*
June, 1972			
Airfare	*$353*	*$353*	
Hotel	*160*	*160*	
Meals	*120*	*90*	
Misc.	*40*	*30*	
	$673	*$593*	*$1,266*
October, 1973			
Airfare	*$353*	*$353*	
Hotel	*160*	*160*	
Meals	*120*	*120*	
Misc.	*40*	*40*	
	$673	*$673*	*$1,346*
December, 1973			
Airfare	*$ 0*	*$353*	
	0		
	0		

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT A.

New York Expense to Arbitration from California
Page 3

E 1047

	Fred Kayne	Chuck Sloane	TOTAL
January, 1974			
Airfare	$353	$353	
Hotel	160	160	
Meals	120	120	
Misc.	40	40	
	$673	$673	$1,346
January, 1974 *Witness flown to New York and back*			
Airfare	$353		
Hotel	80		
Meals	60		
Misc.	20		
	$713		$ 713
February, 1974			
Airfare	$353	$353	
Hotel		117	
Meals		80	
Misc.	20	20	
	$373	$570	$ 943

Miscellaneous expenses during eighteen month legal period (telephone, postage, research) $ 500

TOTAL EXPENSES $28,528.81

[illegible]

[illegible]

Chuck Sloane

[illegible]

DEFENDANT'S EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

B

ITIONAL DEFENDANT KAYNE'S EXHIBIT B.

E 1048

GOLDENBOCK AND BARELL
60 EAST 42ND STREET
NEW YORK, N.Y. 10017
212-986-3300
CABLE "GOLEGAL"

BERNARD H. GOLDFLUSS
ARTHUR M. HANDLER
ROBERT M. SIRNBAUM
STEVEN R. FRANKEL
ARTHUR C. SILVERMAN
CHARLES ZALAZNICK
SAM W. GALOWITZ
RUDOLF CALLMANN
COUNSEL

BENJAMIN L. SILVER
IRVING SHIMOFF
FREDERICK K. WALLACH
MICHAEL R. LAZARUS
ROGER A. GERBER
MICHAEL A. LEVIN
PETER ROTHENBERG
DAVID A. MANDEL
MICHAEL C. SILBERBERG
JOEL A. FEERST
LOUISE E. DEMBECK
ARTHUR I. WEINSTEIN
MARK G. STERN
H. JOSEPH MELLO
HARVEY SCHWARTZ
JEFFREY N. SIEGEL
STEPHEN M. RATHKOPF
RICHARD M. RESNIK
ALBERT H. GORMAN
EDWARD D. TANENHAUS
JEROLD S. YALE
ROBERT S. GOODMAN
ANDREA HYDE
ROBERT J. SHANSKY
MICHAEL S. MULLMAN
IRA S. GREENE
RONALD S. KATZ
GEORGE T. SIMON
CHRISTINA B. LEE

December 19, 1973

Mr. Charles Gross
32 The Intervale
Roslyn Estates, New York 11516

Dear Charles:

You have requested that we provide you with an estimate of our legal fees to date in connection with our representation of you in (i) the arbitration proceeding pending before the Board of Arbitration of the New York Stock Exchange commenced by Charles Sloane and Fred Kayne, and (ii) the prior federal court action commenced by the same claimants against you in California.

When we undertook to represent you in these proceedings, it was agreed that our fees would be based on our regular time charges. These charges, through November 30, 1973, total $40,251. My partner, Mr. Silverman, informs me that there has been substantial effort devoted to the arbitration proceeding during the month of December, and according to his best estimate, there has eventuated additional time charges of approximately $4,000. He has informed me that there are further arbitration sessions which will be required, and additional attention to the case thereafter.

In view of the extended proceedings, the unanticipated efforts extended by us on your behalf, our prior relationship, and other circumstances, it has been agreed that our final fee will be substantially less than time charges.

I have advised you, however, that our fee in no event will be less than $25,000.

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT B.
GOLENBOCK AND BARELL

E1049

Mr. Charles Gross

December 19, 1973

We have received from you on account of the foregoing legal fees, payments to date totalling $4,500. You have agreed to pay to us an additional $4,000 on account before the end of 1973.

In connection with our representation, there has been incurred by us on your account to date out-of-pocket disbursements totalling $1,736.77. These disbursements have been paid by you to the extent of $1,716.47. The foregoing amounts do not include charges by the reporting service for the transcript which, as of October 31, 1973, totalled 1013 pages, except that our firm did advance on your behalf the sum of $52.65 to Benjamin Reporting Co. on February 22, 1973. Nor do the foregoing sums for disbursements include charges by the New York Stock Exchange for photocopying; or legal fees and disbursements paid by you to the California law firm of Wyman, Bautzer, Rothman & Kuchel.

Sincerely,

Justin M. Golenbock

JMG/pm

Add

DEFENDANT'S
Kayne
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
C for N

DEFENDANT KAYNE'S EXHIBIT C.

E 1050

oeb & Co.

VICE SINCE 1899

Y. 10004, (212) 944-6300

Branch Offices
4 East 28th Street at 5th Avenue
525 Seventh Avenue at 38th Street
57 West 57th Street at 6th Avenue
1900 Avenue of the Stars Los Angeles, Calif.
2091 Broadway at 72nd Street
931 Madison Avenue at 74th Street
920 Flatbush Avenue at Church Ave. (Bklyn.)
110 North Doheny Drive Beverly Hills, Calif.

Members New York Stock Exchange · American Stock Exchange · Chicago Board of Trade · New York Cotton Exchange · Commodity Exchange · New York Cocoa Exchange

MEMORANDUM TO ALL PERSONNEL

Subject: Executive Appointment

I am pleased to announce the appointment of Fred Kayne as Assistant Managing Partner.

Fred, who is presently a resident partner in Century City, has been instrumental in the success of that undertaking. A graduate of M.I.T. with a degree in industrial engineering and industrial management, he also possesses a strong background in the securities industry.

I am confident that everyone will give Fred their complete cooperation and support.

Charles H. Gross
Managing Partner

July 28, 1970
CHG/mb

DITIONAL DEFENDANT KAYNE'S EXHIBIT D.

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

E 1051

AGENDA - EXECUTIVE COMMITTEE
MEETING OF NEWBURGER, LOEB & CO.
TO BE HELD ON AUGUST 24, 1970

I. Opening of meeting by Robert L. Newburger, Chairman of Executive Committee.

II. Remarks by Fred Kayne, Managing Partner.

a. distribute letter of August 21, 1970, to New York Stock Exchange;

b. distribute assignments.

III. Specific proposals by Managing Partner.

a. general partners meeting - September 3, 1970;

b. assignments of tax refunds;

c. proposal to become a non-clearing firm and authorization to sign clearing agreement;

d. authorization to continue negotiations and to terminate lease on One New York Plaza;

e. authorization to continue negotiation of termination of other leases;

f. termination of retainer agreement with Golenbock & Barell.

IV. Other Old Business.

a. 250 Park Avenue;

b. 74th Street;

c. other matters that may be raised by members of the Executive Committee.

QQ

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT D.

E 1052

New Business:

a. partnership salaries;

b. potential new employees - retail sales;

c. other new business raised by members of the Executive Committee.

VI. Special Reports.

a. California.

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

Loeb & Co.

SERVICE SINCE 1899

N.Y. 10004 (212) 944-6300

Branch Offices

4 East 28th Street at 5th Avenue
525 Seventh Avenue at 38th Street
57 West 57th Street at 6th Avenue
1900 Ave. of the Stars Los Angeles Calif
2091 Broadway at 72nd Street
931 Madison Avenue at 74th Street
920 Flatbush Ave. at Church Ave., Bklyn.
110 N Doheny Dr., Beverly Hills Calif.

Members New York Stock Exchange · American Stock Exchange · Chicago Board of Trade · New York Cotton Exchange · Commodity Exchange · New York Cocoa Exchange

August 21st, 1970

New York Stock Exchange
4 New York Plaza
New York City, N.Y. 10004

Attn: Mr. George N. Newman

Gentlemen:

This is in response to our meeting on the afternoon of August 13th, 1970 in which we discussed my role as the new Managing Partner of Newburger, Loeb & Co., and more particularly, some of the problems at our firm.

The following should be pertinent to the questions asked in your follow-up letter of August 17th, 1970.

1. Our capital ratio as of July 31st, 1970 was 1365%. In August it appears that we will lose approximately $110,000. This $110,000 will include some non-recurring expenses of closing down two offices and eliminating certain activities.

2. Our capital ratio for August 31st, 1970 should not increase very significantly since an inflow of capital from the sale of commodity seats ($57,000) and the recovery of a back-office error ($30,000) will contribute a credit of $87,000 to our capital position.

3. At the end of August, the firm of Perlberg, Moness, Williams and Sidell & Friend will clear elsewhere and this will relieve Newburger, Loeb & Co. of approximately $1,200,000 in aggregate indebtedness and improve our capital position.

4. It is my opinion that the balance of the year will show substantial movement of our P & L due to the economies

RR

being effected. If this is the case, we will reduce the drains on our capital. We will alleviate this by continuing to eliminate aggregate indebtness and attracting small capital, but these are not significant solutions.

5. Therefore, I have recommended to the Executive Committee of Newburger, Loeb & Co. that we become a non-clearing firm, and they have concurred. (copy attached)

6. Through Mr. Paul Fitzgerald of your office we have received the names and contacted the following N.Y.S.E. member firms for discussion:

Neuberger, Berman &Co.
Cogan, Berlind, Weill & Levitt
W.E. Hutton & Co.
L.F. Rothschild & Co.
Edwards & Hanly
Thomson & McKinnon
Abraham & Co.

Neuberger, Berman & L.F. Rothschild did not feel they could handle our business properly.

C.B.W.L. has their hands full with Hayden, Stone.

Thomson & McKinnon & Abraham & Co. had no interest.

Edwards & Hanly seemed inadequate to us.

W.E.Hutton & Co. appears very attractive. They appear to have adequate capacity, sound business procedures and good people. I personally met with Mr. W.E. Hutton, Mr. Jim Hutton, Mr. Stuart Harrington & Mr. James Barbi for two hours yesterday. All the basic discussions appear favorable to me. Newburger, Loeb & Co. would be prepared to finalize an agreement quickly if they render a favorable decision.

It must be pointed out that Newburger, Loeb & Co. has some long-term liabilities on leased space, that will no longer be required in a non-clearing firm. This can be taken care of after we become a non-clearing firm.

ADDITIONAL DEFENDANT
KAYNE'S EXHIBIT E.

E 1055

I trust that this will show our direction and answer the questions you have posed to Newburger, Loeb & Co.

Very truly yours,

Fred Kayne

Fred Kayne
Managing Partner

FK:pm

MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT F.

GRACE OFFICE DATE NOV. 4, 19 70

TO WILLIAM J. WILLIAMSON JR., VICE PRESIDENT
MARINE MIDLAND TRUST CO. OF WESTERN NEW YORK
237 MAIN STREET
BUFFALO, NEW YORK 14203

No.37787 E 1056

In accordance with instructions, the following described securities were this day withdrawn from safekeeping.

DESCRIPTION, include name of security, ctf. nos., maturity, etc.	Cpn. Dates	No. shs. or P. V.
GUARANTEE OF LIABILITY SIGNED BY CHARLES H. GROSS & ROBERT L. NEUBURGER IN THE AMT. OF $500,000.00 DATED 3/20/70 GOVERNING NEW LOEB SPORTS ENTERPRISES, INC. SUCCESSOR TO NEW LOWB SPORTS ENTERPRISES, INC.		$500,000.00

Enter Receipt Form Nos. in This Space—

47950

Disposition of Securities, Instructions, etc.

MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK

Authorized Signature and Approval

Received Above Securities:

Safekeeping Clerk

DEFENDANT'S
Kayne + Mush
EXHIBIT
U. S. DIST. COURT
S. DIST. N.Y.

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT F. E 1057

GUARANTEE OF LIABILITY

New York, March 20, 1970

For the purpose of inducing MARINE MIDLAND ~~[illegible]~~ Western TRUST COMPANY OF NEW YORK (hereinafter referred to as the "Trust Company") to make such advances, loans, discounts or extensions of credit and to purchase such notes and other instruments for the payment of money, and any security documents relative thereto, or conditional contracts of sale, chattel mortgages, leases and other lien or security instruments, as it may deem advisable, directly or indirectly, to or for the account of, or from, New Loeb Sports Enterprises, Inc. Successor to New Loeb Sports Enterprises, Inc. or any one or more of them jointly and/or severally (each, any and all of whom are hereinafter called "Borrower"), and/or to grant to or for the account of Borrower such renewals, extensions, forbearances, releases of collateral or other relinquishments of legal rights, as Trust Company may deem advisable, and in consideration of advances, loans, discounts, extensions of credit, overdrafts or purchases, due or to become due, heretofore made to or from Borrower and for other valuable consideration, receipt of which is hereby duly acknowledged, the undersigned (each, any and all of whom are hereinafter called "Guarantor") hereby guarantees to Trust Company, its successors, subsidiaries, endorsees and assigns, the prompt and unconditional payment of any and every obligation and liability of Borrower to Trust Company and claims of every nature and description of Trust Company against Borrower, whether or not represented by negotiable instruments or other writings, including but not limited to purchase and repurchase agreements, whether now existing or hereafter incurred, originally contracted with Trust Company and/or with another or others and now or hereafter owing to or acquired in any manner by Trust Company, whether contracted by Borrower alone or jointly and/or severally with another or others, direct or indirect, absolute or contingent, secured or not secured, matured or not matured. (All of the foregoing are hereinafter referred to as "Obligations.")

Guarantor does hereby give to Trust Company a continuing lien for the amount of the obligations and liabilities of Guarantor hereunder, as well as for the payment of any and all other liabilities and obligations of Guarantor to Trust Company and claims of every nature and description of Trust Company against Guarantor, whether now existing or hereafter incurred, originally contracted with Trust Company and/or with another or others and now or hereafter owing to or acquired in any manner by Trust Company, whether contracted by Guarantor alone or jointly and/or severally with another or others, direct or indirect, absolute or contingent, secured or not secured, matured or not matured (all of which are hereafter collectively called "Liabilities") upon any and all moneys, securities and other property of Guarantor and the proceeds thereof, now or hereafter actually or constructively held or received by or in transit in any manner to Trust Company, its correspondents or agents from or for Guarantor, whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into possession of Trust Company in any way and also upon any and all deposits (general or special) and credits of Guarantor with any and all claims of Guarantor against, Trust Company at any time existing, hereby authorizing Trust Company at any time or times, with or without prior notice, to apply such deposits or credits, or any part thereof, to such Liabilities and in such amounts as Trust Company may select, although said Liabilities may be contingent or unmatured, and whether the collateral security therefor is deemed adequate or not. (All of the foregoing, together with any property, now or hereafter, pledged, assigned and transferred to and deposited with Trust Company or its agents by Guarantor to secure said Liabilities, are hereafter collectively called "collateral security.")

Guarantor consents that without the necessity for any additional endorsement or guarantee of said Obligations or any reservation of rights against Guarantor and without notice to or further assent by Guarantor, the liability of Borrower or of any co-guarantor, or of any other party for or upon any of said Obligations may, from time to time, in whole or in part, be renewed, extended, modified, prematured, compromised or released by Trust Company, as it may deem advisable, and that any collateral or liens for any of said Obligations, may, from time to time, in whole or in part, be exchanged, sold or surrendered by Trust Company, as it may deem advisable, all without impairing, abridging, affecting, diminishing or releasing the liability of Guarantor hereunder, Trust Company shall not be liable for failure to collect or demand payment of, or protest or give any notice of nonpayment of, said collateral security, or any part thereof, or for any delay in so doing, nor shall Trust Company be under any obligation to take any action whatever in regard to said collateral security or any part thereof. Any stocks, bonds or other securities held by Trust Company as part of said collateral security may, whether or not a default exists, be registered and held in the name of Trust Company or its nominee and Trust Company or said nominee may exercise all voting and corporate rights as if the absolute owner thereof, including the right to exchange, at its discretion, any and all such securities or other property upon the reorganization, recapitalization or other readjustment of any corporation and in connection with such reorganization, recapitalization, or other readjustment to deposit any and all of said securities with any committee or depositary upon such terms and conditions as it may determine, all without notice and without liability except to account for property actually received by it.

Trust Company may sell all or any part of the collateral security deposited or pledged for said Liabilities, although said Liabilities may be contingent or unmatured, whenever in its absolute and unrestricted discretion Trust Company considers such sale necessary, for its protection. Any such sale may be made in the manner hereinafter provided for the sale of collateral security without prior demand for margin or additional margin or for payment on account of notice of sale or intention to sell or any other demands or notices whatsoever; the making of any such demands or the giving of any such notices in any one or more instances shall not constitute a waiver of the right of Trust Company to sell said collateral security as herein provided without any demand or notice whatsoever or of the right of Trust Company to accelerate the maturity of said Liabilities as herein provided.

If Guarantor shall fail to perform any agreement contained herein or contained in any security document or other agreement delivered by Guarantor to Trust Company (and the opinion of Trust Company as to the existence of such failure of performance shall be conclusive and binding upon Guarantor), or if default occurs in the punctual payment of any sum payable upon any of said Obligations or said Liabilities or said collateral security, or if Guarantor or Borrower or any obligor, maker, endorser, acceptor, surety or guarantor of, or any other party to, said Obligations or said Liabilities or said collateral security (each and all of whom are included in the term "them" as hereinafter used in this paragraph) shall default in respect of any liabilities or obligations (present or future, absolute or contingent, secured or unsecured, matured or unmatured, joint or several) of any of them to Trust Company, or in the event any of them (being an individual) shall die or (being a partnership or corporation) shall be dissolved, or in the event any of them shall become insolvent, commit an act of bankruptcy, make an assignment for the benefit of creditors, call a meeting of creditors, appoint a committee of creditors, or a liquidating agent, offer to, or receive from, creditors a composition or extension of any of their indebtedness, make, or send notice of an intended, bulk sale, assign, pledge or mortgage any account receivable or other property, suspend payment, suspend or liquidate their usual business, fail, after demand, to furnish any financial information or to permit inspection of books or records of account, make any misrepresentation to Trust Company for the purpose of obtaining credit or an extension of credit, or fail to pay any tax or other bill when due, or if any proceeding in bankruptcy, or any proceeding, suit or action (at law, in equity, or under any of the provisions of the Bankruptcy Act or amendments thereto) for reorganization, composition, extension, arrangement, wage earners' plan, receivership, liquidation or dissolution shall be begun by or against any of them, or in the event of the application for the appointment, or the appointment in any jurisdiction, at law or in equity, of any receiver, conservator, rehabilitator or similar officer, or committee of, or of any of the property of, any of them, or if a judgment shall be recovered or a warrant of attachment or an injunction shall be issued against, or against any of the property of, any of them, or if the condition or affairs (financial, business, or otherwise) of any of them shall so change as, in the opinion of Trust Company (whose opinion shall be conclusive in the matter) shall impair its security or increase its credit risk, or if Trust Company otherwise deems itself insecure, then, in any of those events, the said Liabilities although not yet due shall, without notice or demand, forthwith become and be immediately due and payable, notwithstanding any time or credit allowed under any of said Liabilities or under any instrument evidencing the same.

Upon the happening of any of the events hereinabove set forth, Trust Company, without demand of performance, advertisement or notice of intention to sell or of time or place of sale or to redeem, or other notice or demand whatsoever to or upon Guarantor or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon said collateral security, or any part thereof, and/or may forthwith sell, assign, give option or options to purchase, and deliver said collateral security, or any part thereof, or any property whatsoever of any kind to which it may be entitled as collateral security for the said Liabilities, in one or more parcels, at public or private sale or sales, at any exchange, brokers' board or at any of Trust Company's offices or elsewhere, at such prices as it may deem best, for cash, or on credit, or for future delivery, without assumption of any credit risk, with the right to Trust Company upon any such sale or sales, public or private, to purchase the whole or any part of said collateral security so sold, free from any right or equity of redemption in Guarantor, which right or equity is hereby expressly waived and released.

Trust Company may apply the net proceeds of any such collection, receipt, appropriation, realization or sale, after deducting all costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of said collateral security or in any way relating to the rights of Trust Company hereunder, including all expenses for legal services to the payment in whole or in part, in such order as Trust Company may elect, of one or more of said Liabilities, whether then due or not due, absolute or contingent, making proper rebate for interest or discount on items not then due and accounting for the surplus, if any, to Guarantor, who shall remain liable to Trust Company for the payment of any deficiency with legal interest.

Guarantor waives any and all notice of acceptance of this guarantee or of the creation, renewal, extension or accrual of any of said Obligations, or of the reliance by Trust Company upon this guarantee. Said Obligations, and each of them, shall conclusively be presumed to have been created, contracted or incurred in reliance upon this guarantee and all dealings between Borrower and Trust Company shall likewise conclusively be presumed to have been had or consummated in reliance upon this guarantee. Guarantor waives protest, demand for payment, notice of default or nonpayment to or on Guarantor, Borrower or any other party liable for said Obligations or Liabilities. This guarantee shall be construed as a continuing, absolute and unconditional guarantee of payment, without regard to the validity, regularity or enforceability of any of said Obligations or purported Obligations.

Any notice to, or demand on, Guarantor elected to be given or made by Trust Company shall be deemed effective, if not first otherwise made or given, when forwarded by mail, telegraph, cable, radio, telephone, or otherwise to the last address of Guarantor appearing on the books of Trust Company with the same effect as if the same was actually delivered to, and received by, Guarantor in person. Trust Company shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder and no waiver whatever shall be valid unless in writing, signed by Trust Company, and then only to the extent therein set forth. A waiver by Trust Company of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Trust Company would otherwise have had on any future occasion. No executory agreement shall be effective to change or modify or to discharge in whole or in part this guarantee unless such executory agreement is in writing and signed by Trust Company. All rights and remedies of Trust Company hereunder shall be cumulative and may be exercised singly or concurrently, Guarantor hereby waives the benefit of any homestead or other exemptions in respect of said Liabilities. This guarantee shall, without further reference, pass to, and may be relied upon and enforced by, any successor or assignee of Trust Company, and any transferee or subsequent holder of any of said Obligations. This agreement may be terminated only upon written notice to that effect, relating solely to new debts of Borrower subsequently incurred, delivered by Guarantor to Trust Company and duly receipted for by it; and in the event of such termination (whether by such notice, death or otherwise) Guarantor and his, its or their respective successors, executors, administrators and assigns shall nevertheless remain liable with respect to Obligations created or arising theretofore and with respect to such Obligations and any renewals, extensions or other liabilities arising out of the same, this guarantee shall continue in full force and effect and Trust Company shall have all the rights herein provided for as if no such termination had occurred.

The term "Trust Company" as used throughout this instrument shall be deemed to include Marine Midland Trust Company of Western New York in all its branches and departments, and any individual, partnership or corporation acting hereunder as agent for Marine Midland Trust Company of New York, and any corporate subsidiary or Marine Midland Trust Company of New York, the stock of which is owned or controlled, directly or indirectly, by Marine Midland Trust Company of New York. The term "Borrower" as used throughout this instrument shall include the individual or individuals, association, partnership or corporation named herein as Borrower and (a) any successor individual or individuals, association, partnership or corporation to which all or substantially all of the business or assets of said Borrower shall have been transferred (b) in the case of a partnership Borrower, any new partnership which shall have been created by reason of the admission of any new partner or partners therein or the dissolution of the existing partnership by the death, resignation or other withdrawal of any partner, and (c) in the case of a corporate Borrower, any other corporation into or with which said Borrower shall have been merged, consolidated, reorganized, or absorbed.

If the Trust Company shall institute any action for the enforcement of this guarantee, there shall be immediately due from the Guarantor all costs and expenses of such action and an attorney's fee at twenty per cent of the amounts then owing and unpaid by the Borrower and the Trust Company may take judgment for the entire amount due. Guarantor, if more than one, shall, be jointly and severally bound and liable hereunder and if any of the undersigned is a partnership, also the members thereof individually. This guarantee shall be construed in accordance with the laws of the State of New York.

rantee is unlimited except to the extent of *$500,000

(If guarantee is limited, the extent of such limitation must be inserted in the space provided.)

IN WITNESS WHEREOF, each of the undersigned has hereunto set his hand and his or its seal the day and year first above written, intending and declaring this to be a duly sealed instrument.

Witness:

Charles H. Gross (L. S.)

(L. S.)

Robert L. Newourger (L. S.)

(L. S.)

Individual(s) Acknowledgment

STATE OF NEW YORK } ss.:
COUNTY OF

On this day of , 19, before me personally appeared

to me known, and known to me to be the individual(s) described in and who executed the foregoing instrument and (t) (s) he (y) duly acknowledged to me that (t) (s) he (y) executed same.

Partnership Acknowledgment

STATE OF NEW YORK } ss.:
COUNTY OF NEW YORK

On this 20TH day of March, 19[illegible] before me personally appeared

to me known and known to me to be the members of the partnership of mentioned and described in and which executed the foregoing instrument, and the said members duly acknowledged to me that they executed said instrument for and on behalf of and with the authority of the said firm of for the uses and purposes therein mentioned.

JACK C. VORIS
NOTARY PUBLIC, STATE OF NEW YORK
No 24-9193435
Qualified in Kings County
Commission Expires March 30, 1970

Corporate Acknowledgment

STATE OF NEW YORK } ss.:
COUNTY OF

On this day of , 19, before me personally came

to me known, who being duly sworn, did depose and say that he resides at ; that he is the of , the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK

E 1059

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT G.

GRACE OFFICE DATE NOV. 4, 19 70

TO: MARINE MIDLAND TRUST CO. OF WESTERN N.Y.
237 MAIN STREET
BUFFALO, NEW YORK 14203
ATT: MR. WILLIAM J. WILLIAMSON JR., VICE PRESIDENT

No.37785

In accordance with instructions, the following described securities were this day withdrawn from safekeeping.

DESCRIPTION, include name of security, ctf. nos., maturity, etc.	Cpn. Dates	No. shs. or P. V.
GUARANTEE OF LIABILITY SIGNED BY CHARLES H. GROSS IN THE AMT. OF $250,000.00 GOVERNING NEW LOEB SPORTS ENTERPRISES,INC. SUCESSOR TO NEW LOWB SPORTS ENTERPRISES INC.		$250,000.00

Enter Receipt Form Nos. in This Space

47945

Disposition of Securities, Instructions, etc.

RETURNED TO NEWBURGER, LOEB & CO.

Safekeeping Clerk

MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK

Authorized Signature and Approval

Received Above Securities:

DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT G. E 1060

GUARANTEE OF LIABILITY

Western New York, March 26 19 70

For the purpose of inducing MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK (hereinafter referred to as the "Trust Company") to make such advances, loans, discounts or extensions of credit and to purchase such notes and other instruments for the payment of money, and any security documents relative thereto, or conditional contracts of sale, chattel mortgages, leases and other lien or security instruments, as it may deem advisable, directly or indirectly, to or for the account of, or from, New Loeb Sports Enterprises, Inc. Successor to New Loeb Sports Enterprises, Inc. or any one or more of them jointly and/or severally (each, any and all of whom are hereinafter called "Borrower"), and/or to grant to or for the account of Borrower such renewals, extensions, forbearances, releases of collateral or other relinquishments of legal rights, as Trust Company may deem advisable, and in consideration of advances, loans, discounts, extensions of credit, overdrafts or purchases, due or to become due, heretofore made to or from Borrower and for other valuable consideration, receipt of which is hereby duly acknowledged, the undersigned (each, any and all of whom are hereinafter called "Guarantor") hereby guarantees to Trust Company, its successors, subsidiaries, endorsees and assigns, the prompt and unconditional payment of any and every obligation and liability of Borrower to Trust Company and claims of every nature and description of Trust Company against Borrower, whether or not represented by negotiable instruments or other writings, including but not limited to purchase and repurchase agreements, whether now existing or hereafter incurred, originally contracted with Trust Company and/or with another or others and now or hereafter owing to or acquired in any manner by Trust Company, whether contracted by Borrower alone or jointly and/or severally with another or others, direct or indirect, absolute or contingent, secured or not secured, matured or not matured. (All of the foregoing are hereinafter referred to as "Obligations.")

Guarantor does hereby give to Trust Company a continuing lien for the amount of the obligations and liabilities of Guarantor hereunder, as well as for the payment of any and all other liabilities and obligations of Guarantor to Trust Company and claims of every nature and description of Trust Company against Guarantor, whether now existing or hereafter incurred, originally contracted with Trust Company and/or with another or others and now or hereafter owing to or acquired in any manner by Trust Company, whether contracted by Guarantor alone or jointly and/or severally with another or others, direct or indirect, absolute or contingent, secured or not secured, matured or not matured (all of which are hereafter collectively called "Liabilities") upon any and all moneys, securities and other property of Guarantor and the proceeds thereof, now or hereafter actually or constructively held or received by or in transit in any manner to Trust Company, its correspondents or agents from or for Guarantor, whether for safekeeping, custody, pledge, transmission, collection or otherwise or coming into possession of Trust Company in any way and also upon any and all deposits (general or special) and credits of Guarantor with and all claims of Guarantor against, Trust Company at any time existing, hereby authorizing Trust Company at any time or times, with or without prior notice, to apply such deposits or credits, or any part thereof, to [illegible] Liabilities and in such amounts as Trust Company may select, although said Liabilities may be contingent or unmatured, and whether the collateral security therefor is deemed adequate or not. (All of the foregoing, together with any property, now or hereafter, pledged, assigned and transferred to and deposited with Trust Company or its agents by Guarantor to secure said Liabilities, are hereafter collectively called "collateral security.")

Guarantor consents that without the necessity for any additional endorsement or guarantee of said Obligations or any reservation of rights against Guarantor and without notice to or further assent by Guarantor, the liability of Borrower or of any co-guarantor, or of any other party for or upon any of said Obligations may, from time to time, in whole or in part, be renewed, extended, modified, prematured, compromised or released by Trust Company, as it may deem advisable, and that any collateral or liens for any of said Obligations, may, from time to time, in whole or in part, be exchanged, sold or surrendered by Trust Company, as it may deem advisable, all without impairing, abridging, affecting, diminishing or releasing the liability of Guarantor hereunder. Trust Company shall not be liable for failure to collect or demand payment of, or protest or give any notice of nonpayment of, said collateral security, or any part thereof, or for any delay in so doing, nor shall Trust Company be under any obligation to take any action whatever in regard to said collateral security or any part thereof. Any stocks, bonds or other securities held by Trust Company as part of said collateral security may, whether or not a default exists, be registered and held in the name of Trust Company or its nominee and Trust Company or said nominee may exercise all voting and corporate rights as if the absolute owner thereof, including the right to exchange, at its discretion, any and all such securities or other property upon the reorganization, recapitalization or other readjustment of any corporation and in connection with such reorganization, recapitalization, or other readjustment to deposit any and all of said securities with any committee or depositary upon such terms and conditions as it may determine, all without notice and without liability except to account for property actually received by it.

Trust Company may sell all or any part of the collateral security deposited or pledged for said Liabilities, although said Liabilities may be contingent or unmatured, whenever in its absolute and unrestricted discretion Trust Company considers such sale necessary, for its protection. Any such sale may be made in the manner hereinafter provided for the sale of collateral security without prior demand for margin or additional margin or for payment on account of notice of sale or intention to sell or any other demands or notices whatsoever; the making of any such demands or the giving of any such notices in any one or more instances shall not constitute a waiver of the right of Trust Company to sell said collateral security as herein provided without any demand or notice whatsoever or of the right of Trust Company to accelerate the maturity of said Liabilities as herein provided.

If Guarantor shall fail to perform any agreement contained herein or contained in any security document or other agreement delivered by Guarantor to Trust Company (and the opinion of Trust Company as to the existence of such failure of performance shall be conclusive and binding upon Guarantor), or if default occurs in the punctual payment of any sum payable upon any of said Obligations or said Liabilities or said collateral security, or if Guarantor or Borrower or any obligor, maker, endorser, acceptor, surety or guarantor of, or any other party to, said Obligations or said Liabilities or said collateral security (each and all of whom are included in the term "them" as hereinafter used in this paragraph) shall default in respect of any liabilities or obligations (present or future, absolute or contingent, secured or unsecured, matured or unmatured, joint or several) of any of them to Trust Company, or in the event any of them (being an individual) shall die or (being a partnership or corporation) shall be dissolved, or in the event any of them shall become insolvent, commit an act of bankruptcy, make an assignment for the benefit of creditors, call a meeting of creditors, appoint a committee of creditors, or a liquidating agent, offer to, or receive from, creditors a composition or extension of any of their indebtedness, make, or send notice of an intended, bulk sale, assign, pledge or mortgage any account receivable or other property, suspend payment, suspend or liquidate their usual business, fail, after demand, to furnish any financial information or to permit inspection of books or records of account, make any misrepresentation to Trust Company for the purpose of obtaining credit or an extension of credit, or fail to pay any tax or other bill when due, or if any proceeding in bankruptcy, or any proceeding, suit or action (at law, in equity, or under any of the provisions of the Bankruptcy Act or amendments thereto) for reorganization, composition, extension, arrangement, wage earners' plan, receivership, liquidation or dissolution shall be begun by or against any of them, or in the event of the application for the appointment, or the appointment in any jurisdiction, at law or in equity, of any receiver, conservator, rehabilitator or similar officer, or committee of, or of any of the property of, any of them, or if a judgment shall be recovered or a warrant of attachment or an injunction shall be issued against, or against any of the property of, any of them, or if the condition or affairs (financial, business, or otherwise) of any of them shall so change as, in the opinion of Trust Company (whose opinion shall be conclusive in the matter) shall impair its security or increase its credit risk, or if Trust Company otherwise deems itself insecure, then, in any of those events, the said Liabilities although not yet due shall, without notice or demand, forthwith become and be immediately due and payable, notwithstanding any time or credit allowed under any of said Liabilities or under any instrument evidencing the same.

Upon the happening of any of the events hereinabove set forth, Trust Company, without demand of performance, advertisement or notice of intention to sell or of time or place of sale or to redeem, or other notice or demand whatsoever to or upon Guarantor or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon said collateral security, or any part thereof, and/or may forthwith sell, assign, give option or options to purchase, and deliver said collateral security, or any part thereof, or any property whatsoever of any kind to which it may be entitled as collateral security for the said Liabilities, in one or more parcels, at public or private sale or sales, at any exchange, brokers' board or at any of Trust Company's offices or elsewhere, at such prices as it may deem best, for cash, or on credit, or for future delivery, without assumption of any credit risk, with the right to Trust Company upon any such sale or sales, public or private, to purchase the whole or any part of said collateral security so sold, free from any right or equity of redemption in Guarantor, which right or equity is hereby expressly waived and released.

E 1061

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT G.

Trust Company may apply the net proceeds of any such collection, receipt, appropriation, realization or sale, after deducting all costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of said collateral security or in any way relating to the rights of Trust Company hereunder, including all expenses for legal services to the payment in whole or in part, in such order as Trust Company may elect, of one or more of said Liabilities, whether then due or not due, absolute or contingent, making proper rebate for interest or discount on items not then due and accounting for the surplus, if any, to Guarantor, who shall remain liable to Trust Company for the payment of any deficiency with legal interest.

Guarantor waives any and all notice of acceptance of this guarantee or of the creation, renewal, extension or accrual of any of said Obligations, or of the reliance by Trust Company upon this guarantee. Said Obligations, and each of them, shall conclusively be presumed to have been created, contracted or incurred in reliance upon this guarantee and all dealings between Borrower and Trust Company shall likewise conclusively be presumed to have been had or consummated in reliance upon this guarantee. Guarantor waives protest, demand for payment, notice of default or nonpayment to or on Guarantor, Borrower or any other party liable for said Obligations or Liabilities. This guarantee shall be construed as a continuing, absolute and unconditional guarantee of payment, without regard to the validity, regularity or enforceability of any of said Obligations or purported Obligations.

Any notice to, or demand on, Guarantor elected to be given or made by Trust Company shall be deemed effective, if not first otherwise made or given, when forwarded by mail, telegraph, cable, radio, telephone, or otherwise to the last address of Guarantor appearing on the books of Trust Company with the same effect as if the same was actually delivered to, and received by, Guarantor in person. Trust Company shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder and no waiver whatever shall be valid unless in writing, signed by Trust Company, and then only to the extent therein set forth. A waiver by Trust Company of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Trust Company would otherwise have had on any future occasion. No executory agreement shall be effective to change or modify or to discharge in whole or in part this guarantee unless such executory agreement is in writing and signed by Trust Company. All rights and remedies of Trust Company hereunder shall be cumulative and may be exercised singly or concurrently, Guarantor hereby waives the benefit of any homestead or other exemptions in respect of said Liabilities. This guarantee shall, without further reference, pass to, and may be relied upon and enforced by, any successor or assignee of Trust Company, and any transferee or subsequent holder of any of said Obligations. This agreement may be terminated only upon written notice to that effect, relating solely to new debts of Borrower subsequently incurred, delivered by Guarantor to Trust Company and duly receipted for by it; and in the event of such termination (whether by such notice, death or otherwise) Guarantor and his, its or their respective successors, executors, administrators and assigns shall nevertheless remain liable with respect to Obligations created or arising theretofore and with respect to such Obligations and any renewals, extensions or other liabilities arising out of the same, this guarantee shall continue in full force and effect and Trust Company shall have all the rights herein provided for as if no such termination had occurred.

The term "Trust Company" as used throughout this instrument shall be deemed to include Marine Midland Trust Company of Western New York in Westernches and departments, and any individual, partnership or corporation acting as ~~agent~~ agent for Marine Midland Trust Company of New York, and any corporate subsidiary or Marine Midland ~~Trust~~ Company of New York, the stock of which is owned or controlled, directly or indirectly, by Marine Midland Trust Company of New York. The term "Borrower" as used throughout this instrument shall include the individual or individuals, association, partnership or corporation named herein as Borrower and (a) any successor individual or individuals, association, partnership or corporation to which all or substantially all of the business or assets of said Borrower shall have been transferred (b) in the case of a partnership Borrower, any new partnership which shall have been created by reason of the admission of any new partner or partners therein or the dissolution of the existing partnership by the death, resignation or other withdrawal of any partner, and (c) in the case of a corporate Borrower, any other corporation into or with which said Borrower shall have been merged, consolidated, reorganized, or absorbed.

If the Trust Company shall institute any action for the enforcement of this guarantee, there shall be immediately due from the Guarantor all costs and expenses of such action and an attorney's fee at twenty per cent of the amounts then owing and unpaid by the Borrower and the Trust Company may take judgment for the entire amount due. Guarantor, if more than one, shall, be jointly and severally bound and liable hereunder and if any of the undersigned is a partnership, also the members thereof individually. This guarantee shall be construed in accordance with the laws of the State of New York.

This guarantee is unlimited except to the extent of *$250,000 in addition to the guarantee in the amount of $500,000 executed on 3/20/70 for account of the Borrower.

*(If guarantee is limited, the extent of such limitation must be inserted in the space provided.)

IN WITNESS WHEREOF, each of the undersigned has hereunto set his hand and his or its seal the day and year first above written, intending and declaring this to be a duly sealed instrument.

Witness:

/ Charles H. Gross (L. S.)

Charles H. Gross (L. S.)

(L. S.)

(L. S.)

Individual(s) Acknowledgment

STATE OF NEW YORK } ss.:

COUNTY OF

On this 26th day of March, 1970, before me personally appeared Charles H. Gross

to me known, and known to me to be the individual(s) described in and who executed the foregoing instrument and (t) (s) he (y) duly acknowledged to me that (t) (s) he (y) executed same.

Jo-Ann Taddonio

JO-ANN TADDONIO
Notary Public, State of New York
No. 24-9274110
Qualified in Kings County
Commission Expires March 30, 1970

Partnership Acknowledgment

STATE OF NEW YORK } ss.:

COUNTY OF

On this day of, 19, before me personally appeared

to me known and known to me to be the members of the partnership of mentioned and described in and which executed the foregoing instrument, and the said members duly acknowledged to me that they executed said instrument for and on behalf of and with the authority of the said firm of for the uses and purposes therein mentioned.

Corporate Acknowledgment

STATE OF NEW YORK } ss.:

COUNTY OF

On this day of, 19, before me personally came

to me known, who being duly sworn, did depose and say that he resides at ; that he is the of , the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT H.

E 1062

PROPOSED SALE OF ASSETS

Fred Kayne, together with certain of the present partners, will form a corporation called Newburger, Loeb & Co., Inc. ("Corporation"). A contract will then be signed on the following terms:

1. Corporation will agree to purchase certain assets of Newburger, Loeb & Co. ("Partnership"), including:

(a) name and good will

(b) leaseholds and furnishings at California, 72nd Street, 250 Park, 38th Street and 66 Beaver (8th Floor) offices

(c) stock exchange seats

(d) clearing agreement

(e) rights under underwriting agreements

(f) consulting and retainer agreements

(g) mailing lists and names

(h) all books and records

(i) research files

(j) club memberships, season's tickets, and rights to informational services

DEFENDANT'S
Kayne
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

2. Such purchase will be conditional on:

(a) approval of the New York and American Stock Exchanges

(b) public offering and sale of the interest in the basketball team *

(c) Corporation having net capital in excess of $750,000

3. In consideration therefor, Partnership will receive:

(a) $270,000, adjusted to reflect any increase or decrease in the value of the stock exchange seats

(b) $250,000 in 4% subordinated debentures maturing in five years and callable to the extent of $50,000 per year commencing January 1, 1972.

In addition, Corporation will assume all disclosed liabilities with respect to the contracts and leases assigned.

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* Even if the total basketball interest is not sold, Corporation may waive the condition and exercise an option to purchase the remaining interest from Partnership.

ADDITIONAL DEFENDANT DAYNE'S EXHIBIT I.

E 1063A

EXHIBIT I.

Evid.; Letter Kayne to N.Y.S.E. 1/31/71

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

Memo dated August 21, 1970 to
Kayne from Risher, Muh & Co., Inc.

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

TO: Fred Kayne

FROM: Risher, Muh and Co., Inc.

E 1064

Interim Progress Review
Newburger, Loeb & Co.
August 21, 1970

The purpose of this memorandum is to present Risher, Muh and Co.'s initial findings and recommendations in our work thus far with Newburger, Loeb & Co.

Central to the problems facing Newburger, Loeb is its capital position. That position is presently not strong, and various events developing now or expected in the future are likely to cause the forced liquidation of Newburger, Loeb because of inability to satisfy the NYSE's minimum capital rule. Therefore, the sections that follow:

- Detail the present capital position and show the effect of the various events on the capital position.
- Discuss separately the leased space situation.
- Recommend an action program to resolve the problems that will be pointed out./

PRESENT AND PROBABLE FUTURE CAPITAL POSITION

Newburger, Loeb's unaudited net worth as of July 31, 1970 was $4.3 million dollars (Exhibit I). Of that amount, $2.8 million was in limited partner accounts and the remaining $1.5 million was in general partner accounts.

E 1065

However, two negative factors reduce the general partner account:

$1.5 million		
(.5)	"	- Reductions to market value of exchange memberships
(.3)	"	- Remaining unabsorbed losses for unsecured debit balances
$0.7 million		- Total general partner capital

The general partner's position is not strong enough to absorb the losses that are likely to ensue from the various factors we shall detail later. In addition, several general partners accounts are in deficit. And finally, the capital supporting Newburger, Loeb's aggregate indebtedness of $30.0 million is only $2.2 million calculated according to NYSE rules. The present aggregate indebtedness/capital ratio is about 14/1 and a drop of $0.7 million would force liquidation.

The following sections will detail the various events that are likely to reflect negatively on the general partner's capital position and/or the capital position necessary to carry aggregate indebtedness.

Profit and Losses

Thus far, in 1970, Newburger, Loeb has lost $1.3 million. Losses in July were $126 thousand. A statement of operational results for June, July and Year to Date are included as Exhibit II.

As a result of these losses, a number of costs have been reduced and further reductions are in process. Exhibit III outlines monthly profitability variation at various volume levels, assuming further cost reductions, and considering various other changes in income sources.

E 1066

But Exhibit III shows clearly too that net income from operations is likely to be about a $75-$100 thousand/month loss at present volume levels - and more if volume falls off. At a rate of loss of $100 thousand/month, within seven months the general partners capital would be totally expended, and the firm would be forced to liquidate due to violation of the NYSE capital rules.

Basketball Team

Thus far, Newburger, Loeb has invested over $300 thousand in the Buffalo Braves. Before October 14, there is a requirement that an additional $150 thousand be advanced to cover loan repayments of $80 thousand and various operating costs of $70 thousand. (Interest payments alone are $10 thousand/month.)

While the operating costs and expenditures represent "out-of-pocket" losses to the general partners, the loan repayment does not. But the loan repayment will impair the firm's capital position in the eyes of the NYSE.

Capital Withdrawals

Beginning in August, Newburger, Loeb must provide for the withdrawal of a $200 thousand limited partner. His account will be paid out at a rate of $20 thousand per month until a balance of $100 thousand remains, at which time the entire $100 thousand will be paid out. In November, the firm is obligated to pay to the estate of Morris Newburger $500 thousand. These are limited partnership funds, and their payment will have no effect on general partner's capital. But these withdrawals are sufficient to cause violation of the NYSE capital rules.

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E 1067

Leased office space will be discussed in the next section. No attempt is made to relate the leasing problems to their effect on capital since there are many alternatives to consider. But the effect is certain to be negative. The One New York Plaza space will add incremental costs of $23 thousand per month - in a time of a poor stock market and falling real estate rental prices. Total lease obligations for Newburger, Loeb & Co. will approach $60 thousand/month upon completion of the space at One New York Plaza.

LEASED OFFICE SPACE

Downtown -

Newburger, Loeb & Co. currently has about 35,000 square feet of downtown office space under lease. This excludes branches, discussed later, and storage space. Within the next four months, this amount will be increased to over 54,000 square feet as One New York Plaza becomes available (Exhibit IV). Discussions with your architectural design consultants clearly indicate that your present downtown staff, including clearing, could be adequately housed in approximately 15,000 square feet.

Several of these downtown properties were leased within the past year when your firm revenues were falling dramatically and substantial losses were being sustained. In addition, several other facts should be noted:

1. The space at 40 Exchange Place was leased in March 1969, used briefly for your Margin Department, but is now vacant. Approximately $40 thousand was spent in new floors, furniture and fixtures. Although you are paying in excess of $10/sq.ft. for this space, its

E 1068

current market value, based on discussions with several independent real estate agents, is somewhere between $4-$5/sq. ft. This space is now vacant.

2. Your lease at One New York Plaza, dated November 1969, at $15/sq. ft., is one of the highest in that building. The current market for that space - if a buyer could be found - is closer to $8-$10/sq. ft.

3. Newburger, Loeb & Co. had an option to get out of its space on the 24th floor of 66 Beaver Street had notice been given to the landlord prior to July 1, 1970. This option was not exercised.

4. Approximately $16 thousand was spent this year to refurbish the 12th floor of 66 Beaver Street. Although this space includes a large secretarial area and five executive offices, it is presently occupied by only one member of your firm.

5. An additional $40 thousand was spent redecorating the 10th floor. Although this space is being utilized, the expenditure does not appear to have been really necessary.

Clearly, Newburger, Loeb & Co. has overextended itself with respect to downtown office space. It is our opinion that all efforts should be directed foward giving up between 30,000 and 35,000 square feet of downtown space, assuming your present scope of operations. If any significant changes are made in your back office and clearing operations, as discussed earlier, you will not need more than 10,000 square feet of downtown office space, assuming you maintain a downtown boardroom.

E 1069

Midtown -

With the opening of your 250 Park Avenue office within the next four weeks, you will have several offices available for sublet in mid-Manhattan. All your mid-town offices are shown in Exhibit V.

It is our understanding that your office at 74th and Madison Avenue has been sublet to Liberty Music Shops at approximately your present rental cost. Efforts have begun to sublet the two remaining locations, but discussions with several real estate brokers have not been very encouraging.

ACTION PROGRAM

1. Take steps now to become a non-clearing firm. This is the prudent action. The liklihood is strong that Newburger, Loeb will be in capital violation due to one or more of the factors above. In the present market climate and given Newburger, Loeb's recent record, raising additional capital will be difficult.
2. Concentrate attention on relieving the problems of excess space.
3. Recoup the monies laid out for the basketball team by outright sale or public offering of the team. It is possible that over the longer term the basketball team represents a sound investment. For now, though, it is our view that Newburger, Loeb needs to concentrate its capital and energies on preservation and advancement of its position in the investment community.

E 1070

4. Develop better planning procedures. Too little consideration was given to revenue prospects and actual space requirements when space was leased. As a result, there is too much space under lease - much of it at premium prices. Better planning would have prevented this.

5. Develop better cost control and budgeting procedures. An expenditure of $14 thousand for advertising in July came as a surprise. This contributed to July's results being poorer than expectations. Sound budgeting practice should prevent such occurrences. Moreover, we are told that any general partner can obligate the firm financially. Indeed, this is one of the psychic advantages of a partnership, but in its present precipitous position, Newburger, Loeb needs immediate and effective cost control. Usually, this can only be done through strong central management.

Statement of Financial Condition/ July 31, 1970

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

E 1071

ASSETS

CURRENT ASSETS:		
Cash in banks, on hand and deposits with clearing organizations		$ 1,258,306
Receivable from brokers and dealers		4,932,626
Receivable from customers, net of allowance for uncollectible accounts		25,243,012
Market value of securities in partners', firm and subordinated accounts:		
Federal, state & municipal obligations	$ 907,417	
Corporate securities	2,604,457	3,511,874
Prepaid expenses		224,182
Other current assets		92,041
Total current assets		$35,262,041
OTHER ASSETS:		
Memberships in exchanges, at cost	1,157,822	
Furniture and fixtures, net of depreciation	576,765	
Securities not readily marketable, at fair value	12,875	
Investments in (at cost) and advances to subsidiary corporations and affiliated partnership	306,123	
Miscellaneous	109,153	
		2,162,738
		$37,424,779

LIABILITIES AND CAPITAL

CURRENT LIABILITIES:		
Money borrowed - secured by collateral		14,000,000
Payable to brokers and dealers		11,653,983
Payable to customers		5,372,694
Accounts payable and accrued expenses		647,098
Total current liabilities		$31,673,775
CAPITAL AND SUBORDINATED LIABILITIES:		
Equities in accounts subordinated to claims of general creditors	1,410,836	
Capital	4,340,168	
		5,751,004
		$37,424,779

Exhibit II (a)

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

NEWBURGER, LOEB & CO.
STATEMENT OF INCOME

E 1072

	June 1970	July 1970	Year to 7/31/70
Income - Schedule A	$594,485	$514,800	$3,254,542
Direct expenses - Schedule B	316,046	294,420	1,760,373
	$278,439	$220,380	$1,494,169
Indirect Expenses:			
Selling - Schedule C	$ 9,504	$ 31,805	$ 166,520
Communications - Schedule D	58,408	61,429	445,713
Occupancy - Schedule E	52,569	59,527	383,217
Administrative and clerical salaries - Schedule F	155,290	161,803	1,320,696
General and Administrative - Schedule G	120,425	107,957	906,990
Allocation of operations costs			
	$396,196	$422,521	$3,223,136
Total	(117,757)	(202,141)	(1,728,967)
Add - net interest income - Schedule H	49,433	43,257	399,136
Net income from operations	(68,324)	(158,884)	(1,329,831)
Add - investment income - Schedule J	12,368	32,499	36,800
Net income for the period	(55,956)	(126,385)	(1,293,031)

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

NEWBURGER, LOEB & CO.
SUPPORTING SCHEDULES

E 1073

	June 1970	July 1970	Year to 7/31/70
Schedule A - Income:			
Commissions - NYSE	$180,647	$185,968	$1,191,268
- ASE	71,372	46,042	479,448
- NOTC	11,861	1,638	105,867
- OTC	9,654	39,769	156,177
- Gross Credits	92,010	16,176	108,186
	365,544	289,593	2,040,946
Clearance income	8,177	58,233	126,741
Gross commissions earned from introduced accounts	136,791	109,464	537,636
Mutual funds	1,304	4,705	22,456
Underwriting	4,008	(3,672)	199,709
Selling groups	11,981	(2,737)	36,569
Options	549	556	4,158
Proxy	6,021	5,186	24,264
Sundry	(7,193)	282	11,467
G-U Income	(923)	5,362	13,439
Commodity Commissions	946	1,170	5,836
Tender & Redemption income	1,705	1,416	20,719
Surcharge income	65,575	45,242	210,602
	594,485	514,800	3,254,542
Schedule B - Direct Expenses:			
Salesmen's commissions	121,093	131,176	905,335
Salaries Trainees	1,200	600	7,800
Floor brokerage	66,300	52,990	296,428
Clearing House charges	7,085	3,888	24,462
Commission fees	6,777	11,001	47,527
Dues and assessments	--	--	5,589
Automatic Computer Service	25,077	22,765	168,150
Commissions paid on introduced accounts	88,514	72,000	305,082
Underwriting and syndicate expenses			
	316,046	294,420	1,760,373

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

NEWBURGER, LOEB & CO.
SUPPORTING SCHEDULES

E 1074

	June 1970	July 1970	Year to 7/31/70
Schedule C - Selling Expenses:			
Advertising	$ 236	$ 16,702	$ 36,774
Sales literature	351	555	8,641
Research literature	1,198	108	5,133
Entertainment and travel	1,652	7,334	45,330
Research salaries	4,090	5,786	48,100
Corporate Finance expenses	1,977	1,320	22,542
	$ 9,504	$ 31,805	$ 166,520
Schedule D - Communication Expenses:			
Telephone and telegraph	28,792	32,148	197,612
Tickers and projectors			35,948
Quotation board and quote machines	17,914	17,105	88,300
Stationery and supplies	4,316	7,905	74,589
Postage and delivery	7,386	4,271	49,264
	58,408	61,429	445,713
Schedule E - Occupancy Expenses:			
Rent and storage charges	35,037	39,655	251,629
Utilities	2,018	2,052	17,456
Depreciation	7,000	7,000	49,000
Repairs and maintenance	4,284	7,270	41,170
Equipment rental	4,230	3,550	23,962
	52,569	59,527	383,217
Schedule F - Administrative and Clerical Salaries:			
Salaries	149,828	156,535	1,216,963
Overtime	2,072	1,081	23,760
Temporary help	2,229	2,899	44,545
Meals	1,161	1,228	21,211
Personnel agency fees	0	60	14,217
	155,290	161,803	1,320,696

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

NEWBURGER, LOEB & CO.
SUPPORTING SCHEDULES

E 1075

	June 1970	July 1970	Year to 7/31/70
Schedule G - General and Administrative Expenses:			
Partners' salaries	$ 52,144	$ 41,632	$ 389,965
Manager's compensation			
Employee fringe benefits	26,372	6,635	74,181
Legal and professional	18,630	14,641	113,277
Unincorporated business taxes			
Other taxes	13,381	11,772	134,006
Insurance and protection	4,077	5,663	35,588
Bad debts	3,212	272	11,932
Training and seminars	903	1,267	9,862
Donations	0	122	440
Moving expense	152	0	262
Licenses and fees	150	1,488	5,260
Miscellaneous	4,093	4,075	20,816
Dues and subscriptions	4,907	4,226	34,459
Stationery and office supplies			
Postage			
Conversion expenses	4,300	4,300	30,127
Pensions	330	1,503	12,616
Travel & Entertainment	507	0	11,003
Bank Charges (Int.)	47	30	3,773
Error expense	(12,780)	10,331	19,423
	120,425	107,957	906,990
Schedule H - Interest Income:			
Income - customers		183,927	1,490,908
- stocks loaned		1,754	50,829
	193,253	185,681	1,541,737
Expense - bank loans		108,077	926,238
- capital		20,870	199,894
- stocks borrowed		13,477	16,469
	143,820	142,424	1,142,601
Net interest income	49,433	43,257	399,136
Investment Income:			
Gross trading	9,415	(1,015)	(80,882)
Rosen trading	4,091	10,301	33,946
Trading accounts	(30,906)	13,779	(47,566)
MBT accounts	29,768	9,434	131,302
	12,368	32,499	36,800

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

MONTHLY PROFITABILITY VARIATION AT VARIOUS VOLUME LEVELS

E1076

NEWBURGER, LOEB & CO.
STATEMENT OF INCOME

Income - Schedule A	$296,050	$390,900	$521,400
Direct expenses - Schedule B	144,050	191,700	255,300
Contribution	152,000	199,200	266,100
Indirect Expenses:			
Selling - Schedule C		9,500	
Communications - Schedule D		55,000	
Occupancy - Schedule E		54,800	
Administrative and clerical salaries - Schedule F		118,439	
General and Administrative - Schedule G		103,500	
Allocation of operations costs			
		341,239	
Total	(189,239)	(142,039)	(75,139)
Add - net interest income - Schedule H	30,000	45,000	60,000
Net income from operations	(159,239)	(97,039)	(15,139)
Add - investment income - Schedule J	(10,000)	30,000	30,000
Net income for the period	(169,239)	(67,039)	15,139

· Perlberg contribution eliminated
· One New York Plaza eliminated
· No effect given to Basketball Team

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

NEWBURGER, LOEB & CO.
SUPPORTING SCHEDULES

E 1077

Schedule A - Income:			
Commissions - NYSE			
- ASE			
- NDT			
- CTC			
	$225,000	$300,000	$400,000
Clearance income	11,000	15,000	20,000
Gross commissions earned from introduced accounts	9,000	12,000	16,000
Mutual funds	3,500	4,700	6,300
Underwriting	0	0	0
Selling groups	2,300	3,000	4,000
Options	0	500	700
Proxy	3,000	5,000	6,700
Sundry	750	1,000	1,300
G.U. Income	1,500	2,000	2,800
Commodity	900	1,200	1,600
Tender & Redemption	1,100	1,500	2,000
Surcharge	38,000	45,000	60,000
	$296,050	$390,900	$521,400
Schedule B - Direct Expenses:			
Salesmen's commissions	97,000	129,000	172,000
Trainees	0	0	0
Floor brokerage	19,000	25,000	33,000
Clearing House charges	2,300	3,000	4,000
Commission fees	6,000	7,700	10,000
Dues and assessments	750	1,000	1,300
Automatic Computer Service	13,000	18,000	24,000
Commissions paid on introduced accounts	6,000	8,000	11,000
Underwriting and syndicate expenses			
	$144,050	$191,700	$255,300

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

NEWBURGER, LOEB & CO.

SUPPORTING SCHEDULES

E 1078

Schedule C - Selling Expenses:	
Advertising	$ 1,500
Sales literature	1,000
Statistical services	
Entertainment and travel	5,000
Research salaries	2,000
	9,500
Schedule D - Communication Expenses:	
Telephone and telegraph	28,000
Tickers and projectors	15,000
Quotation board and quote machines	
Stationery and supplies	7,000
Postage	5,000
	55,000
Schedule E - Occupancy Expenses:	
Rent and storage charges	40,000
Utilities	2,800
Depreciation	7,000
Repairs and maintenance	5,000
	54,800
Schedule F - Administrative and Clerical Salaries:	
Salaries	
Overtime	
Temporary help	
Meals	
Personnel agency fees	
	118,439

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.
NEWBURGER, LOEB & CO.
SUPPORTING SCHEDULES

E 1079

Schedule G - General and Administrative Expenses	
Partners' salaries	$ 42,000
Manager's compensation	
Employee fringe benefits	9,000
Legal and professional	15,000
Unincorporated business taxes	
Other taxes	12,000
Insurance and protection	6,000
Bad debts	1,000
Training and seminars	1,000
Donations	200
Moving expense	500
Licenses and fees	700
Miscellaneous	3,000
Dues and subscriptions	4,000
Stationery and office supplies	
Postage	
Conversion expenses	4,300
Pensions	300
Bank charges	500
Error expense	4,000
	103,500

Schedule H - Interest Income:	
Income - customers	
- stocks loaned	
Expense - bank loans	
capital	
stocks borrowed	
Net interest income	45,000
Trading	30,000

EXHIBIT IV

Location	Expiration of Lease	Square Feet (approx)	Cost per Square Foot	Total Annual Cost	Expenditure to Refurbish (1969-70 only)	Current Utilization
8th & 9th Floor 66 Beaver Street	9/30/76	24,200	$ 5.00*	$124,000*	$ 13,173	Executive offices Board Room Back office
10th Floor 66 Beaver Street	9/30/76	3,075	6.60*	20,400*	44,200	Personnel Comptroller Law Co.
12th Floor 66 Beaver Street	2/28/77	1,300	7.10*	9,260*	16,045	Research (one man)
14th Floor 66 Beaver Street	2/28/77	1,020	8.50	8,520	1,599	Storage
24th Floor 66 Beaver Street	1/30/77	2,200	8.50	17,400 (sublet)	--	Rosen & Co. Institutional Board Room
40 Exchange Place	4/30/74	3,400	10.00	34,000	39,581	Vacant
1 New York Plaza	12/31/90	19,500	15.60	305,400	35,709	Not ready for occupancy
TOTAL		54,695		$518,980	$150,307	

*Escalation of approximately 2% per year is currently under dispute with landlord.

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

E 1080

EXHIBIT V

Location	Expiration of Lease	Square Feet	Cost per Square Foot	Total Annual Cost	Current Utilization
4 E. 28th Street	12/31/71	2,500	$ 7.60	$ 18,700	Vacant as of 10/1/70
38th Street & 7th Avenue	1/31/72	1,080	16.10	17,800	Active Branch
74th Street & Madison Avenue	6/30/73	1,100	19.50	21,000	Sublet to Liberty
57 W. 57th Street	1/31/75	2,300	11.50 to'73 14.00 to'75	26,500 32,000	Vacant as of 10/1/70
72nd Street & Broadway	9/30/73	2,415	9.00	22,000	Active Branch
250 Park Avenue	8/31/75	5,000	13.00 to'71 17.00 to'73 20.00 to'75	65,000 85,000 100,000	To be occupied by 10/1/70
TOTAL		14,395		$171,000 (1971 rate)	

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT J.

E 1081

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ADDITIONAL DEFENDANT KAYNE'S EXHIBIT K.

E 1082

LOCATION

66 Beaver S
(5 Hanover

40 Exchange

28th Street
(4 East 28t

38th Street
(525 Seventh

74th Street
(931 Madison

57th Street
(57 West 57t

72nd Street
(2091 Broadw

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT K.

E1 1082

File

SPACE UNDER LEASE TO NEUBURGER, LOEB & CO.

LOCATION		SQUARE FEET	RENT	EXPIRATION OF LEASE	OUT CLAUSE
66 Beaver Street (5 Hanover Square)	8th - 9th Floors	8th Floor-12,000 Sq. ft. 9th Floor-11,100 Sq. ft. rentable	$124,320 (8th & 9th Floors combined)	9/30/76	None
	18th Floor	3,075 Sq. feet	$20,401	9/30/76	None
	12th Floor	1,000 Sq. feet	$ 9,256	2/28/77	None
	14th Floor	1,023 Sq. feet	$ 8,520	2/28/77	None
	24th Floor	2,193 Sq. feet	$17,400	1/30/77	None
40 Exchange Place	6th Floor	3,400 Sq. feet	$34,000	4/30/74	None
28th Street (4 East 28th Street)	Street Floor	2,500 Sq. feet	$18,700	12/31/71	None
38th Street (525 Seventh Avenue)	Street Floor	1,080 Sq. feet	$17,800	1/31/72	None
74th Street (931 Madison Avenue)	Street Floor	1,100 Sq. feet	$21,000	6/30/73	None
57th Street (57 West 57th Street)	2nd Floor	2,300 Sq. feet	$26,500	1/31/73	None
72nd Street (2091 Broadway)	Street Floor	2,415 Sq. feet	$22,000 Approx. (Net lease on entire three story building $18,000)	9/30/73	None

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT K.

SPACE UNDER LEASE TO NEWBURGER, LOEB & CO., CONTD.

LOCATION		SQUARE FEET	RENT	EXPIRATION OF LEASE	OUT CLAUSE
1 New York Plaza	49th Floor	19,481 Square feet	$305,400 (1-10 yrs. $277,600 (11-20 yrs.)	0 years after "Commencement Date".	None, except cancellable if not ready by 12/31/70 due to landlord's delay.
250 Park Avenue (64 E. 47th Street)	Street Floor	5,000 Square feet	$65,000 first yr. $85,000 second yr. $100,000 3-5 yrs.	8/31/75	Cancellable 2/14/72 on 30 days notice with penalty of $42,500.
Century City (1900 Avenue of the Stars)	23rd Floor	7,675 Square feet	$60,300	11/30/79	None
Beverly Hills (110 N. Doheny Dr.)	Street Floor		$40,000 - $60,000 depending on office volume	1/15/73	Being cancelled effective 8/31/70
52 Broadway	7th Floor	1,240 Square feet	$6,000 paid through N. L. & Co. by Krezin, Prosser, Romano and Gavin	12/31/72	None
115 Broadway	18th Floor	1,700 Square feet	$17,200 paid through N. L. & Co. by Kingsley Boye, & Southwood.	5/30/78	None
76 Beaver Street	6th Floor	1,752 Square feet	$10,500 paid through N. L. & Co. by Fagenson & Frankel	5/31/71	None

LI 1083

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT K.

SPACE UNDER LEASE TO NEWBURGER, LOEB & CO. (CONTD.)

LOCATION	SQUARE FEET	RENT	EXPIRATION OF LEASE	OUT CLAUSE
55 Hudson Street (Franklin Moving & Storage Company	enough space for 1,000 transfer files and 200 linear feet of ledgers	$3,240	4/30/74	None

ADDITIONAL DEFENDANT KAYNE'S EXHIBIT L.
February 10, 1971

E 1085

TO: The Admissions Committee

FROM: The Department of Member Firms

SUBJECT: Newburger, Loeb & Co., Inc. - Successor to Newburger, Loeb & Co. (Ltd. Partnership)

The firm of Newburger, Loeb & Co., Inc. was formed by Messrs. Paul Risher and Robert Muh for the purposes of succeeding to the business of Newburger, Loeb & Co.. The firm has 90 registered representatives in four offices in New York and California. All accounts are introduced to W. E. Hutton & Co. on a disclosed basis.

The corporation has been granted permission by the S.E.C. to register as a successor to a registered broker-dealer partnership pursuant to Rule 15b1-3 under the Securities Exchange Act and must register as such within 30 days after such succession.

The general partners, limited partners and subordinated lenders agreed to convert their interests in the partnership to non-voting common stock, convertible preferred stock and long-term subordinated accounts and notes, pursuant to an agreement dated December 31, 1970.

On November 16, 1970, a Suspension Warning Letter was sent to the firm based on pending capital withdrawals of approximately $1,560,000 within the subsequent 130 days. The capital withdrawals represented both general and limited partner withdrawals pursuant to their partnership agreement. At that time the firm had excess net capital of approximately $575,000. The firm was given to November 20, 1971, to produce a plan for reorganization or liquidation. Since November 16, 1970, the withdrawing limited partners have signed agreements that they would not withdraw funds from the partnership for a stipulated period of time. These agreements have been renewed four times, the latest agreement expires at the close of business, February 10, 1971. The partnership had 23 general partners, 11 of whom had a positive capital position amounting to $1,115,795. The remaining 12 general partners had a negative capital position amounting $1,296,777 including the accounts of Robert Sterr, deficit $391,000; Andrew Newburger, deficit $473,000; Robert Newburger, deficit $129,000, and Harold Richards, deficit $131,000. These deficits came about primarily because of prior years' losses and the accumulated 1970 losses which amounted to $2,842,000. After unsuccessful attempts to borrow money in order to make up their individual deficits, the firm submitted a plan of reorganization on December 17, 1970, stating that if negotiations were not accomplished, it would resign its membership and liquidate.

E 1086

The limited partners and subordinated lenders were told by the firm that if liquidation were to take place at that time, the general partners would receive nothing, the limited partners would receive nothing and the subordinated lenders would receive less than 50¢ on the dollar.

The new corporation will assume all assets and liabilities of the partnership and provide a subordinated account which contains 8,000 shares of Barcardi stock with an estimated value of $900,000 (capital value $225,000) and approximately $50,000 in cash. In exchange, certain present general partners will receive 12% of the voting stock, and convertible preferred stock. The limited partners will receive a convertible preferred stock and non-voting stock. The subordinated lenders will extend their subordination agreements to a five-year period. However, the corporation has agreed to repay approximately 30% of the subordinated accounts within six months.

Due to the firm's continuous problems since 1968, Mr. Charles Gross, Managing Partner, resigned in August, 1970, and was succeeded by Mr. Fred Kayne. Messrs. Risher and Muh were engaged as Management Consultants by the firm during the short period of time that Fred Kayne was Managing Partner (August through November, 1970).

The Exchange staff worked very closely with Mr. Kayne during August, September and October, 1970, to deliver all customer accounts to W. E. Hutton & Co., on a fully disclosed basis. Mr. Kayne resigned on November 14, and was succeeded by Mr. Robert Newburger. Mr. Kayne stated the reason for his resignation was primarily due to his "inability to make sufficient headway in reorganizing the partnership and his wife's medical condition."

The staff has worked very closely with the new corporation, but has experienced much difficulty due to lack of familiarity with Exchange rules and practices on the part of the proposed principals.

The losses of the partnership during the last six months of 1970 are as follows:

July	($126,385)	October	($392,165)
August	($58,612)	November	($1,700,223)
September	($58,666)	December	($51,754)

E 1087

The net capital computation during key periods in 1970 is as follows:

	9/25	11/12	11/27	12/10	12/31
A.I.	$28,488,000	$1,647,000	$760,742	$760,742	$721,325
N.C.	1,938,000	657,000	7,604	407,000	467,559
RATIO	1,433%	251%	10,004%	186%	155%
EX. N.C.(deficiency)	564,000	575,033	(42,396)*	357,000	417,559

* This deficiency was corrected by the sale of proprietary securities on November 30, 1970. The above is based on unaudited financial information supplied by the partnership.

The staff tried to pursuade Messrs. Risher, Muh and Kayne to invest additional capital in the new corporation, above the $10,000 minimum Exchange requirement for which they receive 78% of the voting stock. The staff also tried to pursuade them to engage a competent, knowledgeable senior principal officer. We were unsuccessful in both attempts and at the insistence of Mr. Risher, the proposed corporate membership was posted on January 29, 1971, for consideration by the Admissions Committee on February 10, and the Board on February 11. The staff made it perfectly clear that although the firm was posted as a proposed member, there could be no certainty of a Board approval on February 11.

In addition to the above, the staff learned the following:

a) The new corporation is assuming all assets and liabilities of the partnership,
b) The long term lease commitments amount to approximately $400,000 annually,
c) Litigation involving the partnership will be assumed by the corporation. Known claims through December 31, 1970, amounts to $1,103,243. Mr. Risher informed the staff that the firm estimates the settlement of these claims to be no greater than $144,700,
d) The firm will be managed by an executive committee who are not experienced as senior principals in the management and operations of a member firm. (see detailed background memorandum).

The staff negotiated certain restrictions in the event of approval on February 11 (copy attached).

The final closing and acceptance by the general and limited partners and subordinated lenders for the partnership and Messrs.

E 1088

Risher, Muh and Kayne for the proposed corporation is expected to take place February 11, 1971, after 5 p.m., if the Board of Governors approves the corporation for membership. If the corporation is not approved or all parties of the partnership do not agree on a closing, the partnership will resign its membership in the Exchange and go into self-liquidation as a non-member partnership. If this is done, W. E. Hutton & Co. will retain all customer accounts, thereby avoiding the necessity of using S.I.P.C.

ADD
DEFENDANT'S
EXHIBIT
U. S. DIST. COURT
S. DIST. OF N. Y.
(M)

ADDITIONAL DEFENDANT
KAYNE'S EXHIBIT M.

Loeb & Co.
SERVICE SINCE 1899
N.Y. 10004 (212) 943-6300

Branch Offices
4 East 28th Street at 5th Avenue
523 Seventh Avenue at 38th Street
57 West 57th Street at 6th Avenue
1900 Ave. of the Stars, Los Angeles, Calif.
2091 Broadway at 72nd Street
931 Madison Avenue at 74th Street
920 Flatbush Ave. at Church Ave., Bklyn.
110 N Doheny Dr., Beverly Hills, Calif.

Members New York Stock Exchange · American Stock Exchange · Chicago Board of Trade · New York Cotton Exchange · Commodity Exchange · New York Cocoa Exchange

E 1089

September 18th, 1970

Department of Member Firms
New York Stock Exchange
4 New York Plaza
New York City, New York 10017

Attention: Mr. Bill Dilger

Gentlemen:

In response to your request for an answer to your letter of August 20th, 1970, I am enclosing a letter addressed to Mr. Donald Moyes, of your office, by our Partner, Mr. Robert Stern.

As you know, I came to New York August 3rd, 1970 and was made Managing Partner on August 11th. It became apparent, after meeting with your staff at the New York Stock Exchange and after getting initial input of the internal problems of Newburger, Loeb & Co., that we should become a non-clearing firm.

I immediately began negotiating in a vigorous manner with others so that our entire back office and customer accounts could be shifted to another member firm's facilities. On August 27th, I signed a clearing agreement with W.E. Hutton & Co. which provided for the transfer of these accounts on an orderly basis. Enclosed is a copy of the letter that went to all of our clients, yesterday, detailing the timing of our arrangement with W.E. Hutton & Co.

Your letter of August 20th was directed to Robert Stern and he was preparing the answer when I reviewed a copy of your letter on or about September 1st. It was my feeling that your area of questions with regards to our problems would all be answered by our becoming a non-clearing firm.

ADDITIONAL DEFENDANT
KAYNE'S EXHIBIT M.

E 1090

It is my hope and desire that when the transfer of accounts is complete at the end of September, that I can get about the business of bringing Newburger, Loeb & Co. back to the proud and outstanding firm that it was in the past.

There will be quite a change in the composition of our firm in that many Partners will be leaving and new Partners and talent will be attracted. I certainly look forward to this development and will work in this direction with great vigor.

Very truly yours,

Newburger, Loeb & Co.

By Fred Kayne
Fred Kayne, Managing Partner

FK:pm

RECEIVED
SEP 1970
G.H.N.

E 1091

Newburger, Loeb & Co.

AND INVESTMENT SERVICE SINCE 1899

HANOVER SQUARE, NEW YORK, N.Y. 10004 (212)944-6300

Branch Offices

4 East 28th Street at 5th Avenue
525 Seventh Avenue at 38th Street
57 West 57th Street at 6th Avenue
2091 Broadway at 72nd St
931 Madison Avenue at 74th St
2366 Broadway at 86th St
920 Flatbush Avenue at Church Avenue (Brooklyn)

ADDITIONAL DEFENDANT
KAYNE'S EXHIBIT M.

Members New York Stock Exchange · American Stock Exchange · Chicago Board of Trade · New York Cotton Exchange · Commodity Exchange · New York Cocoa Exchange

September 16, 1970

Dear Client:

We have recently entered into a clearing agreement with W. E. Hutton & Co., a leading Member of the New York Stock Exchange. This agreement takes effect for trades of September 21 that settle on Septemb[illegible] 28, 1970. We are responsible for settlement of transactions prior to Septembe[illegible] 8, 1970.

This agreement provides that your account will be carried on the books of W. E. Hutton & Co. and serviced by your Account Executive at Newburger, Loeb & Co. We will continue to provide you with all the investment service and advice, and you will be dealing directly with your Account Executive at Newburger, Loeb & Co. We feel that by concentrating our considerable resources on the financial services end of the business rather than the paperwork and clearing functions we will continue to build and service our valued clientele in the best possible manner.

W. E. Hutton & Co. will use their in-house computer capacity to process your statements and confirmations and to clear your trades with other firms. Your records of securities and balances, currently carried by us, will be automatically transferred to the computer facilities at W. E. Hutton, unless we hear from you to the contrary. You will receive your final statement from us as of the close of business September 25, 1970 and your initial W. E. Hutton statement as of October 29, 1970. All inquiries should be directed to your Account Executive.

Newburger, Loeb & Co. is engaged in a significant expansion of its research and sales capacity. During the week of September 14, we are opening a major new office at 250 Park Avenue in midtown Manhattan. Before the end of 1970, Newburger, Loeb & Co. will have expanded its facilities in downtown New York at its headquarters location to include a broader spectrum of financial services and investment planning departments.

The opening of our Los Angeles office is now complete, and it has already received wide acclaim in the industry as one of the best conceived and operating facilities in the country.

I would like to extend an invitation for you to stop in and see our new facilities and to better acquaint yourself with our firm. We are confidently looking forward to the 1970's and will strive to make them profitable for you and us.

Very truly yours,

Fred Kayne

Fred Kayne
Managing Partner

FK/mb

E/E

GENERAL PARTNERS' EXHIBITS

G.P. X A

GENERAL PARTNERS' EXHIBIT A.

E 1092

November 10, 1970

Executive Committee
Newburger, Loeb & Co.
5 Hanover Square
New York, New York 10004

Attention: Mr. Fred Kayne

Gentlemen:

Pursuant to the provisions of Article 7.1.a of Article VII of the Restated Articles of Limited Partners of Newburger, Loeb & Co., as amended, dated as of the 26th day of February 1970, I hereby notify you of my withdrawal as a General Partner from the partnership of Newburger, Loeb & Co., effective as of the close of business on December 10, 1970.

Nothing in this withdrawal notice is to in anyway serve as a waiver of any rights that I may presently have or acquire in the future against any partners of the firm or against the partnership.

Very truly yours,

John F. Settel

Receipt acknowledge: Fred Kayne 11/10/70
Fred Kayne - date